

1352 United States
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Circuit Court of Appeals

For the Ninth Circuit.

TOM PAPPAS, CHARLES H. FERGUSON and
OLIVER THOMPSON,

Plaintiffs in Error.

VS.

THE UNITED STATES OF AMERICA,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of
the Western District of Washington, Northern Division.

FILED

MAY 29 1923

F. D. MONTGOMERY

CLERK

United States
Circuit Court of Appeals
For the Ninth Circuit.

TOM PAPPAS, CHARLES H. FERGUSON and
OLIVER THOMPSON,

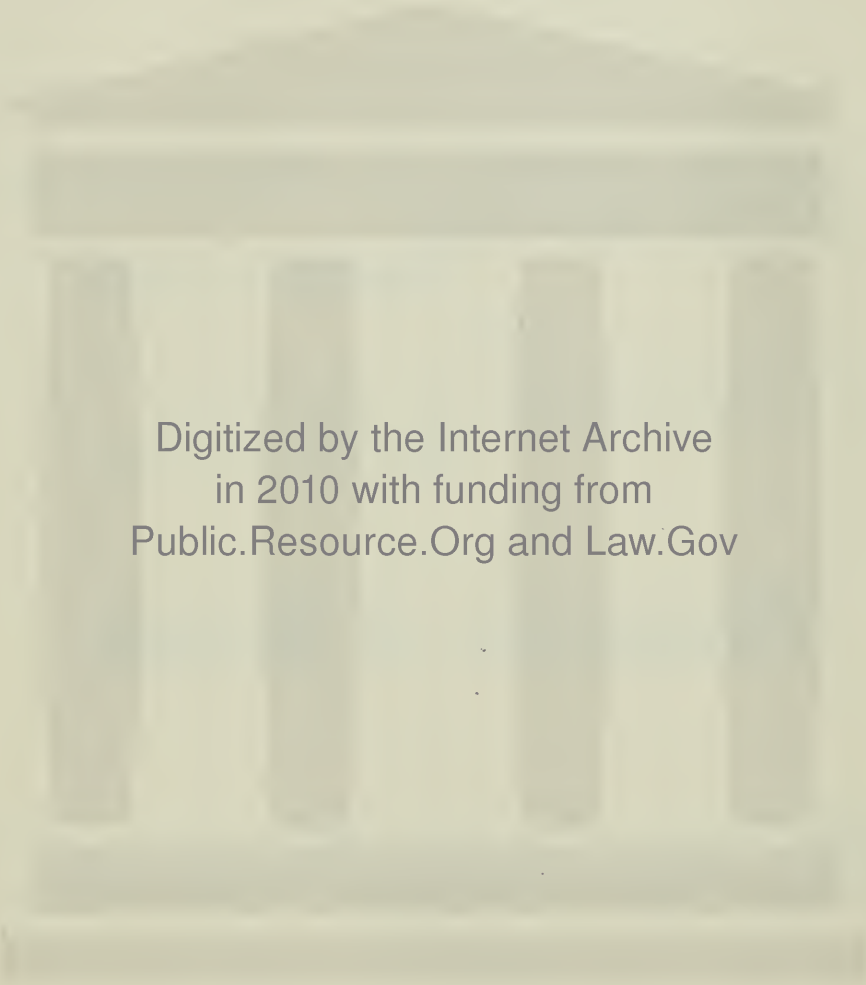
Plaintiffs in Error.

vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Names and Addresses of Counsel.

FRED C. BROWN, Esq., Attorney for Plaintiff in
Error Tom Pappas,

201 Lyon Building, Seattle, Washington.

EDWARD H. CHAVELLE, Esq., Attorney for
Plaintiffs in Error Charles H. Ferguson and
Oliver Thompson,

315 Lyon Building, Seattle, Washington.

THOMAS P. REVELLE, Esq., United States At-
torney, Attorney for Defendant in Error,

310 Federal Building, Seattle, Wash.

DE WOLFE EMORY, Esq., Assistant United States
Attorney, Attorney for Defendant in Error,

310 Federal Building, Seattle, Washington.

[1*]

United States District Court, Western District of
Washington, Northern Division.

No. 7069.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TOM PAPPAS, C. FERGUSON and O. THOMP-
SON,

Defendants.

Information.

BE IT REMEMBERED, that Thomas P.

*Page-number appearing at foot of page of original certified Trans-
cript of Record.

Revelle, Attorney of the United States of America, for the Western District of Washington, who, for the said United States in this behalf prosecutes in his own person, comes here into the District Court of the said United States for the district aforesaid, on the 29th day of September, in this same term, and for the said United States gives the Court here to understand and be informed that, as appears from the affidavit of H. V. Mooring, made under oath herein filed:

COUNT I.

That on the thirtieth day of June, in the year of our Lord one thousand nine hundred and twenty-two, at the City of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, Tom Pappas, C. Ferguson and O. Thompson, whose true Christian names are to the United States Attorney unknown, then and there being, did then and there knowingly, wilfully and unlawfully have and possess certain intoxicating liquor, to wit, forty-six (46) bottles each containing one-fifth of a gallon of a certain liquor known as whiskey and one hundred and twenty (120) pints of a certain liquor known as beer, then and there containing [2] more than one-half of one per centum of alcohol by volume and fit for use for beverage purposes, a more particular description of the amount and kind thereof being to the United States Attorney unknown, intended then and there by the said Tom Pappas, C. Ferguson and O. Thompson, for use in violating the Act of Congress passed October 28,

1919, known as the National Prohibition Act, by selling, bartering, exchanging, giving away and furnishing said intoxicating liquors, and which possession of said liquors by the said Tom Pappas, C. Ferguson and O. Thompson, as aforesaid, was then and there unlawful and prohibited by the Act of Congress passed October 28, 1919, known as the National Prohibition Act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

COUNT II.

And the said United States Attorney further informs the Court that on the thirtieth day of June, in the year of our Lord one thousand nine hundred and twenty-two, at the City of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, Tom Pappas, C. Ferguson and O. Thompson, whose true Christian names are to the United States Attorney unknown, then and there being, did then and there knowingly, wilfully and unlawfully transport in a certain vehicle then and there in charge of the said Tom Pappas, C. Ferguson and O. Thompson, to wit, a certain automobile known as a Studebaker automobile, Washington license 122240, Engine No. BG56587, certain intoxicating liquor, to wit, forty-six (46) Bottles each containing one-fifth of a gallon of a certain liquor known as whiskey and one hundred and twenty (120) pints of a certain liquor known as beer, then and [3] there containing more than

one-half of one per centum of alcohol by volume and fit for use for beverage purposes, a more particular description of the kind and quantity thereof being to the United States Attorney unknown, and which transporting of said liquor by the said Tom Pappas, C. Ferguson and O. Thompson, as aforesaid, was then and there unlawful and prohibited by the Act of Congress passed October 28, 1919, known as the National Prohibition Act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

COUNT III.

And the said United States Attorney further informs the court that on the thirtieth day of June, in the year of our Lord one thousand nine hundred and twenty-two, at the City of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, Tom Pappas, C. Ferguson and O. Thompson, whose true Christian names are to the United States Attorney unknown, then and there being, did then and there knowingly, wilfully and unlawfully sell certain intoxicating liquor, to wit, twenty-four (24) bottles each containing one-fifth ($1/5$) of a gallon of a certain liquor known as whiskey, then and there containing more than one-half of one per centum of alcohol by volume and fit for use for beverage purposes, a more particular description of the amount and kind of said liquor being to the United States Attorney unknown, and which sale of said liquor by the said Tom Pappas, C. Ferguson

and O. Thompson, as aforesaid, was then and there unlawful and prohibited by the Act of Congress passed October 28, 1919, known as the National Prohibition Act; contrary to the form of the statute in such case made and provided, and against the peace [4] and dignity of the United States of America.

THOS. P. REVELLE,
United States Attorney.

CHAS. E. ALLEN,
Assistant United States Attorney.

Let warrant issue:

Bail fixed \$750.

NETERER,
Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Sep. 29, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [5]

United States District Court, Western District of
Washington, Northern Division.

No. 7069.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TOM PAPPAS,

Defendant.

Arraignment and Plea.

Now, on this 23d day of October, 1922, the above defendant comes into open court for arraignment accompanied by his attorney F. C. Reagan, and says that his true name is Tom Pappas. Whereupon the reading of the information is waived and he here and now enters his plea of not guilty.

Journal #10, page 327. [6]

United States of America, Western District of
Washington, Northern Division.

No. 7069.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

C. FERGUSON and O. THOMPSON,

Defendant.

Arraignment and Plea.

Now, on this 30th day of October, 1922, the above defendants come into open court for arraignment accompanied by their attorney C. L. Reames and say that their true names are Charles H. Ferguson and Oliver Thompson. Whereupon each defendant here and now enters his plea of not guilty.

Journal #10, page 348. [7]

United States of America, Western District of
Washington, Northern Division.

No. 7069.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TOM PAPPAS, CHARLES L. FERGUSON and
OLIVER THOMPSON,

Defendants.

Trial.

Now, on this 20th day of December, 1922, this cause comes on for trial with C. E. Allen present in behalf of the Government, Fred C. Brown for defendant Pappas, and E. H. Chavelle for defendants Ferguson and Thompson. Whereupon all parties being present a jury is empanelled and sworn as follows: Emmet S. Palmer, F. S. Backus, Robert Patrick, J. H. Gordon, W. H. Ettridge, Paul Wangsmo, William H. Patterson, Jens Anderson, F. A. Beeler, Grank G. Mann, Willis Markham, and Samuel J. Rice. Upon motion of E. H. Chavelle, all witnesses were excluded from the courtroom except when testifying. Opening statements are made to the jury for both sides. Government witnesses are sworn and examined as follows: Harold V. Mooring, Maude Mooring, Walter M. Justi, Max Anderson and W. M. Whitney. Government Exhibits Numbered 1, 2, 3, 4, 5 and 6 are introduced as evidence.

Journal #10, page 431. [8]

United States of America, Western District of
Washington, Northern Division.

No. 7069.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TOM PAPPAS, CHARLES L. FERGUSON and
OLIVER THOMPSON,

Defendants.

Trial Resumed.

Now, on this 21st day of December, 1922, all parties being present, trial in this cause is resumed. Government witnesses are sworn and examined as follows: W. M. Whitney (recalled), Leonard Regan, and C. W. Kline. Government Exhibits Numbered 7 and 8 are introduced as evidence. Government rests. Fred C. Brown, attorney for defendant Pappas moves for directed verdict as to said defendant Tom Pappas. Said motion is denied and exception is allowed. E. H. Chavelle, attorney for defendants Ferguson and Thompson moves for a directed verdict as to said defendants Ferguson and Thompson. Said motion is denied and exception allowed. Defendant's witnesses are sworn and examined as follows: J. C. Hill, Earle Ramage, and Tom Pappas. Defendant Pappas rests. Defendant's witnesses are sworn and examined as follows: Charles L. Ferguson and Oliver Thompson. Defendants Ferguson and Thompson rest.

Motion is made by defendant Pappas for a directed verdict. Said motion is denied and exception allowed. Motion is made by defendants Ferguson and Thompson for a directed verdict. Said motion is denied and exception allowed. Cause is now argued to the jury by both sides. Jury after being instructed by the Court, retired for deliberation. Jury again came into open court at 4:30 P. M. All defendants being present and likewise all attorneys, roll-call of jury is waived. A verdict of guilty on all counts is returned and reads as follows: "We, the jury in the above-entitled cause, find the defendant Tom Pappas is guilty as charged in Count I of the information herein; and further find the defendant Charles L. Ferguson is guilty [9] as charged in Count I of the information herein; and further find the *the* defendant Oliver Thompson is guilty as charged in Count I of the information herein; and further find the defendant Tom Pappas is guilty as charged in Count II of the information herein; and further find the defendant Charles L. Ferguson is guilty as charged in Count II of the information herein; and further find the defendant Oliver Thompson is guilty as charged in Count II of the information herein; and further find the defendant Tom Pappas is guilty as charged in Count III of the information herein; and further find the defendant Charles L. Ferguson is guilty as charged in Count III of the information herein and further find the defendant Oliver Thompson is guilty as charged in Count III of the information herein, Ernest G. Palmer, foreman. Verdict is ordered filed and sentence is set for

December 26, 1922. Defendants are allowed to go on present bail. [10]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 7069.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TOM PAPPAS, CHARLES L. FERGUSON and
OLIVER THOMPSON,

Defendants.

Verdict.

We, the jury in the above-entitled cause, find the defendant Tom Pappas is guilty, as charged in Count I of the information herein; and further find the defendant Charles L. Ferguson is guilty, as charged in Count I of the information herein; and further find the defendant Oliver Thompson is guilty as charged in Count I of the information herein; and further find the defendant Tom Pappas is guilty, as charged in Count II of the information herein; and further find the defendant Charles L. Ferguson is guilty, as charged in Count II of the information herein; and further find the defendant Oliver Thompson is guilty, as charged in Count II of the information herein; and further find the defendant Tom Pappas is guilty, as charged in Count III of the information

herein; and further find the defendant Charles L. Ferguson is guilty, as charged in Count III of the information herein; and further find the defendant Oliver Thompson is guilty, as charged in Count III of the information herein.

EMMET S. PALMER,

Foreman.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 21, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [11]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

IN ADMIRALTY—No. 7069.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TOM PAPPAS, OLIVER THOMPSON, and
CHARLES H. FERGUSON,

Defendants.

Motion in Arrest of Judgment.

Comes now Oliver Thompson, one of the defendants in the above-entitled cause, and moves the Court to arrest judgment and sentence herein, upon the ground and for the reason, among others:

That Counts I, II and III, of the indictment

herein had no force or effect, in the above-entitled cause, and are contrary to the law.

EDWARD H. CHAVELLE,
Attorney for Defendant Oliver Thompson.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 26, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [12]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 7069.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

TOM PAPPAS, OLIVER THOMPSON, and
CHARLES H. FERGUSON,
Defendants.

Motion in Arrest of Judgment.

Comes now Charles H. Ferguson, one of the defendants in the above-entitled cause, and moves the Court to arrest judgment and sentence herein, upon the ground and for the reason, among others:

That Counts I, II and III of the indictment herein had no force or effect in the above-entitled cause, and are contrary to the law.

EDWARD H. CHAVELLE,
Attorney for Defendant Charles H. Ferguson.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 26, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [13]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

IN ADMIRALTY—No. 7069.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TOM PAPPAS et al.,

Defendants.

Motion for New Trial.

Comes now the defendant, Tom Pappas, and moves the Court to set aside the verdict of the jury heretofore entered herein, and grant a new trial, on the following grounds:

1. Insufficiency of the evidence to justify verdict.
2. Said verdict was against, and contrary to the evidence.
3. Said verdict was against, and contrary to law.
4. Errors of law occurring during the trial, and excepted to by the attorney for the defendant.

FRED C. BROWN,

Attorney for Defendant Tom Pappas,

Received copy Jan. 2, 1923.

THOS. P. REVELLE,

Atty. for Pltf.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jan. 2, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [14]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 7069.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TOM PAPPAS, OLIVER THOMPSON and
CHARLES H. FERGUSON,

Defendants.

Motion for New Trial.

Now comes the defendant Charles H. Ferguson, and moves the Court to set aside the verdict of the jury heretofore entered herein, and grant a new trial, on the following grounds:

1. Insufficiency of the evidence to justify the verdict.
2. Said verdict was against, and contrary to the evidence.
3. Said verdict was against, and contrary to law.

4. Errors of law occurring during the trial, and excepted to by the attorney for the defendant.

EDWARD H. CHAVELLE,
Attorney for Defendant Charles H. Ferguson.

Due service of within motion admitted this 23d day of December, 1922, and receipt of copy thereof acknowledged.

THOMAS P. REVELLE,
Attorney for Plaintiff.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 26, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [15]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 7069.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

TOM PAPPAS, OLIVER THOMPSON, and
CHARLES H. FERGUSON,
Defendants.

Motion for New Trial.

Comes now the defendant, Oliver Thompson, and moves the Court to set aside the verdict of the jury heretofore entered herein, and grant a new trial, on the following grounds:

1. Insufficiency of the evidence to justify the verdict.

2. Said verdict was against, and contrary to the evidence.

3. Said verdict was against, and contrary to law.

4. Errors of law occurring during the trial, and excepted to by the attorney for the defendant.

EDWARD H. CHAVELLE,

Attorney for Defendant Oliver Thompson.

Due service of within motion admitted this 23 day of December, 1922, and receipt of copy thereof acknowledged.

THOMAS P. REVELLE,

Attorney for Plaintiff.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 26, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [16]

United States of America, Western District of Washington, Northern Division.

No. 7069.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TOM PAPPAS, CHARLES L. FERGUSON,
and OLIVER THOMPSON,

Defendants.

**Hearing on Motions for New Trial and in Arrest
of Judgment and Order Denying Same.**

Now, on this 26th day of December, 1922, motion for a new trial and arrest of judgment is made by counsel for defendants in the above-entitled cause. Motion is argued as to defendants Pappas, Ferguson and Thompson and said motions are denied and exception allowed. Government moves for judgment and sentence. Sentence is passed at this time.

Journal #10, page 440. [17]

United States of America, Western District of
Washington, Northern Division.

No. 7069.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

TOM PAPPAS,
Defendant.

Sentence (Tom Pappas).

Comes now on this 26th day of December, 1923, the said defendant Tom Pappas into open court for sentence and being informed by the Court of the charges herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him and he

nothing says save as he before hath said. Wherefore by reason of the law and the premises it is considered, ordered and adjudged by the Court that the defendant is guilty of violating the National Prohibition Act and that he be punished by being imprisoned in the King County Jail or in such other prison as may be hereafter provided for the confinement of persons convicted of offenses against the laws of the United States for the period of six months and to pay a fine of \$500.00 dollars. Defendant is hereby remanded into the custody of the United States Marshal to carry this sentence into execution.

Judgment and Decree, #3, page 364. [18]

United States of America, Western District of
Washington, Northern Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES FERGUSON and OLIVER THOMP-
SON,

Defendants.

Sentence (Charles Ferguson).

Comes now on this 26th day of December, 1923, the said defendant Charles Ferguson into open court for sentence and being informed by the Court of the charges herein against him and of his conviction of record herein he is asked whether

he has any legal cause to show why sentence should not be passed and judgment had against him and he nothing says save as he before hath said. Wherefore by reason of the law and the premises, it is considered ordered and *and* adjudged by the Court that the defendant is guilty of violating the National Prohibition Act and that he be punished by being imprisoned in the King County Jail or in such other prison as may be hereafter provided for the confinement of persons convicted of offenses against the laws of the United States for the period of six months and to pay a fine of \$500.00 dollars. Defendant is hereby remanded into the custody of the United States Marshal to carry this sentence into execution.

Judgment and Decree, #3, page 364. [19]

United States of America, Western District of
Washington, Northern Division.

No. 7069.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

OLIVER THOMPSON,

Defendant.

Sentence (Oliver Thompson).

Comes now on this 26th day of December, 1923, the said defendant into open court for sentence and being informed by the Court of the charges

herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him and he nothing says save as he before hath said. Wherefore by reason of the law and the premises, it is considered ordered and adjudged by the Court that the defendant is guilty of violating the National Prohibition Act and that he be punished by being confined in the King County Jail or in such prison as may be hereafter provided for the confinement of persons convicted of offenses against the laws of the United States for the period of ninety days. And the said defendant is now hereby remanded into the custody of the United States Marshal to carry this sentence into execution.

Judgment and Decree, #3, page 364. [20]

In the District Court of the United States for
Western District of Washington, Northern
Division.

No. 7069.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TOM PAPPAS et al.,

Defendants.

Petition for Writ of Error.

Comes now the above-named defendant, Tom Pappas, and by his attorney and counsel, Fred

C. Brown, respectfully shows that on December 21, 1922, a jury empanelled in the above-entitled court and cause, returned a verdict finding said Tom Pappas guilty of the indictment heretofore filed in the above-entitled court and cause, and thereafter, within the time limited by law, under rules and order of this court, defendant moved for a new trial, which motion was by the Court overruled and exception thereto allowed, and likewise, within said time, and thereafter, on the 26th day of December, 1922, this defendant was, by order and judgment of the above-entitled court, in said cause, sentenced to serve a term of six months in jail and fined five hundred (\$500.00) dollars.

And your petitioner, feeling himself aggrieved by this verdict, and the judgment and sentence of the Court entered herein as aforesaid, and by the orders and rulings of said Court, and proceedings in said cause, now herewith petitions this Court for an order allowing him to prosecute a Writ of Error from said judgment and sentence to the Circuit Court of Appeals of the United States for the Ninth Circuit, under the laws of the United States, and in accordance with the procedure of said court made and provided, to the end that said proceedings as herein recited, and as more fully [21] set forth in the assignments of error presented herein, may be reviewed and manifest error appearing upon the face of the record of said proceedings, and upon the trial of said cause, may be by said Circuit Court of

Appeals corrected, and that for said purpose a writ of error and citation thereon should issue as by law and ruling of the Court provided, and wherefore, premises considered, your petitioner prays that a writ of error issue, to the end that said proceedings of the District Court of the United States of the Western District of Washington, may be reviewed and corrected, said errors in said record being herewith assigned, and presented herewith, and that pending the final determination of said writ of error by said Appellate Court, an order may be entered herein that all further proceedings be suspended and stayed, and that pending such final determination, said defendant be admitted to bail.

FRED C. BROWN,

Attorney for Defendant Tom Pappas.

Received copy Jan. 2, 1923.

THOS. P. REVELLE,

Atty. for Plaintiff.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jan. 2, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [22]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 7069.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TOM PAPPAS, C. FERGUSON and O.
THOMPSON,

Defendants.

Petition for Writ of Error.

Comes now the above-named defendant, C. Ferguson, and by his attorney and counsel, Edward H. Chavelle, respectfully shows that on the 21st day of December, 1922, a jury empanelled in the above-entitled court and cause, returned a verdict finding said C. Ferguson, guilty of the indictment heretofore filed in the above-entitled court and cause, and thereafter, within the time limited by law, under rules and order of this Court, defendant moved for a new trial, which motion was by the Court overruled, and exception thereto allowed, and likewise, within said time filed his motion for arrest of judgment, and which was by the Court overruled, and to which an exception was allowed; and thereafter, on the 26th day of December, 1922, this defendant was by order and judgment and sentence of the above-entitled court

in said cause, sentenced to pay a fine of \$500.00 and to serve a term of six months in jail.

And your petitioner, feeling himself aggrieved by this verdict, and the judgment and sentence of the Court entered herein as aforesaid, and by the orders and rulings of said Court, and proceedings in said cause, now herewith petitions this Court for an order allowing him to prosecute a writ of error from said judgment and sentence to the Circuit Court of Appeals of the United States [23] for the Ninth Circuit, under the laws of the United States, and in accordance with the procedure of said court made and provided, to the end that said proceedings as herein recited, and as more fully set forth in the assignments of error presented herein, may be reviewed and manifest error appearing upon the face of the record of said proceedings, and upon the trial of said cause, may be by said Circuit Court of Appeals corrected, and that for said purpose a writ of error and citation thereon should issue as by law and ruling of the Court provided, and wherefore, premises considered, your petitioner prays that a writ of error issue, to the end that said proceedings of the District Court of the United States of the Western District of Washington, may be reviewed and corrected, said errors in said record being herewith assigned, and presented herewith, and that pending the final determination of said writ of error by said Appellate Court, an order may be entered herein that all further proceedings be suspended

and stayed, and that pending such final determination, said defendant be admitted to bail.

EDWARD H. CHAVELLE,

Attorney for Defendant C. Ferguson.

Received a copy of the within petition this 28 day of Dec. 1922.

THOS. P. REVELLE,

Attorney for Pltf. D.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 28, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [24]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 7069.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TOM PAPPAS, C. FERGUSON and O.
THOMPSON,

Defendants.

Petition for Writ of Error.

Comes now the above-named defendant, O. Thompson, and by his attorney and counsel, Edward H. Chavelle, respectfully shows that on December 21, 1922, a jury empanelled in the above-entitled court and cause, returned a verdict find-

ing said O. Thompson guilty of the indictment heretofore filed in the above-entitled court and cause, and thereafter, within the time limited by law, under rules and order of this Court, defendant moved for a new trial, which motion was by the Court overruled and exception thereto allowed, and likewise within said time, filed his motion for arrest of judgment, and which was by the Court overruled, and to which an exception was allowed; and thereafter, on the 26th day of December, 1922, this defendant was, by order and judgment and sentence of the above-entitled court, in said cause, sentenced to serve a term of ninety days in jail.

And your petitioner, feeling himself aggrieved by this verdict, and the judgment and sentence of the Court entered herein as aforesaid, and by the orders and rulings of said Court, and proceedings in said cause, now herewith petitions this Court for an order allowing him to prosecute a writ of error from said judgment and sentence to the Circuit Court of Appeals of the United States for the Ninth Circuit, under the laws of the United States, and in accordance with the procedure of said Court made and provided, to [25] the end that said proceedings as herein recited, and as more fully set forth in the assignments of error presented herein, may be reviewed and manifest error appearing upon the face of the record of said proceedings, and upon the trial of said cause, may be by said Circuit Court of Appeals corrected, and that for said purpose a writ

of error and citation thereon should issue as by law and ruling of the Court provided, and wherefore, premises considered, your petitioner prays that a writ of error issue, to the end that said proceedings of the District Court of the United States of the Western District of Washington, may be reviewed and corrected, said errors in said record being herewith assigned, and presented herewith, and that pending the final determination of said writ of error by said Appellate Court, an order may be entered herein that all further proceedings be suspended and stayed, and that pending such final determination, said defendant be admitted to bail.

EDWARD H. CHAVELLE,
Attorney for Defendant O. Thompson.

Received a copy of the within petition this 28 day of Dec. 1922.

THOS. P. REVELLE,
Attorney for Plaintiff.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 28, 1922. F. M. Harshberger, Clerk By S. E. Leitch, Deputy. [26]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 7069.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

TOM PAPPAS et al.,
Defendants.

Assignment of Error.

Now comes the above-named defendant, Tom Pappas by Fred C. Brown, his counsel, and says that in the record and proceedings in the above-entitled cause there is manifest error, in this, to wit:

1. That the Court erred in allowing testimony to go to the jury during the trial of said cause, over the objection of defendant's counsel, of the testimony of various witnesses as to the statements made without the presence of the defendant as to the three charges contained in the indictment.

2. That the said Court erred in allowing testimony to go to the jury during the trial of the case, over the objection of defendant's counsel, which was excepted to at the time by the defendant's counsel, and exception allowed.

3. That the said Court erred in overruling the defendant's motion for a new trial.

4. That the said Court erred in instructing the jury with relation to a conspiracy, and fur-

ther instructing the jury that if they found a conspiracy, the evidence of one of the defendants might be used against all, to which defendant excepted and exception allowed.

5. That the Court erred in failing to instruct the jury that the statement of a conspirator is not evidence against his co-conspirator, unless there is other corroborating testimony. [27]

6. That the Court erred in denying the motion of defendant to dismiss the indictment and for an instructed verdict for the defendant upon the following grounds:

a. That the defendant in error was acting as a Deputy Sheriff of King County, and was under the direction of deputies of the Sheriff of King County in the transaction.

b. The testimony affirmatively shows that the defendant in error was acting in the transaction without any criminal intent whatever and in furtherance of the enforcement of the law by his superior officers.

c. That the entire evidence failed to show that the defendant in error transported the liquor as charged in the indictment.

d. That the entire evidence failed to show that the defendant in error had in his possession the liquor as charged in the indictment.

e. The testimony affirmatively shows that the defendant in error did not commit the offense of selling the liquor charged in the indictment, but the acts therein alleged, and essential to the crime charged, were the acts of other persons than the

defendant in error, but instead the proof of the plaintiff showed that the sale of liquor essential to the proof of the crime charged was another person's crime, and no competent testimony was offered to connect defendant in error with the offense charged.

WHEREFORE, said Tom Pappas, defendant in error, prays that judgment be reversed, and that said Court be directed to grant a new trial of said cause.

FRED C. BROWN,

Attorney for Defendant Tom Pappas.

Received copy Jan. 2, 1923.

THOS. P. REVELLE,

Atty. for Pltf. [28]

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jan. 2, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [29]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 7069.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TOM PAPPAS, C. FERGUSON and O.
THOMPSON,

Defendants.

Assignment of Error.

Now comes the above-named defendant in error, C. Ferguson, by Edward H. Chavelle, his counsel, and says that in the record and proceedings in the above-entitled cause there is manifest error in this to wit:

1. That the Court erred in allowing testimony to go to the jury during the trial of said cause, over the objection of defendant's counsel, of the testimony of various witnesses as to the statements made without presence of the defendant as to the three charges contained in the indictment.

2. That the Court erred in allowing testimony to go to the jury during the trial of said cause over the objection of defendant's counsel, of alleged previous arrests of the defendant.

3. That the said Court erred in allowing testimony to go to the jury during the trial of the case, over the objection of defendant's counsel, which was excepted to at the time by the defendant's counsel, and exception allowed.

4. That the said Court erred in overruling the defendant's motion for a new trial.

5. That the said Court erred in overruling defendant's motion in arrest of judgment.

6. That the said Court erred in instructing the jury [30] with relation to a conspiracy, and further instructing the jury that if they found a conspiracy, the evidence of one of the defendants might be used against all, to which defendant excepted and exception allowed.

7. That the Court erred in failing to instruct

the jury that the statement of a conspirator is not evidence against his co-conspirator, unless there is other corroborating testimony.

8. That the Court erred in denying the motion of the defendant to dismiss the third count of the indictment charging the sale, and for an instructed verdict for the defendant, upon the following grounds:

a. The entire evidence failed to show that the defendant in error sold the liquor as charged in the indictment, or that it was sold under his direction.

b. The testimony affirmatively shows that the defendant in error did not commit the offense of selling the liquor charged in the indictment, but the acts therein alleged, and essential to the crime charged, were the acts of other persons than the defendant in error, and without his direction, authority or consent, and that no evidence of the plaintiff connected the defendant in error with the offense charged in the indictment, but instead the proof of the plaintiff showed that the sale of liquor essential to the proof of the crime charged was another person's crime, and no competent testimony was offered to connect the defendant in error with the offense charged.

WHEREFORE, the said C. Ferguson, defendant in error, prays that the judgment be reversed, and that the said Court be directed to grant a new trial of said cause.

EDWARD H. CHAVELLE,
Attorney for Defendant C. Ferguson.

Received a copy of the within assignment of error, this 28 day of Dec. 1922.

THOS. P. REVELLE,
Attorney for Plf. [31]

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 28, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [32]

In the District Court of the United States for
the Western District of Washington, Northern
Division.

No. 7069.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

TOM PAPPAS, C. FERGUSON and O.
THOMPSON,
Defendants.

Assignment of Error.

Now comes the above-named defendant in error, O. Thompson, by Edward H. Chavelle, his counsel, and says that in the record and proceedings in the above-entitled cause there is manifest error in this, to wit:

1. That the Court erred in allowing testimony to go to the jury during the trial of said cause, over the objection of defendant's counsel, of the testimony of various witnesses as to the statements

made without the presence of the defendant as to the three charges contained in the indictment.

2. That the Court erred in allowing testimony to go to the jury during the trial of said cause, over the objection of defendant's counsel, of alleged previous arrest of the defendant.

3. That the said Court erred in allowing testimony to go to the jury during the trial of the case, over the objection of defendant's counsel, which was excepted to at the time by the defendant's counsel, and exception allowed.

4. That the said Court erred in overruling the defendant's motion for a new trial.

5. That the said Court erred in overruling defendant's motion in arrest of judgment.

6. That the said Court erred in instructing the jury with relation to a conspiracy, and further instructing the jury [33] that if they found a conspiracy, the evidence of one of the defendants might be used against all, to which defendant excepted and exception allowed.

7. That the Court erred in failing to instruct the jury that the statement of a conspirator is not evidence against his co-conspirator, unless there is other corroborating testimony.

8. That the Court erred in denying the motion of the defendant to dismiss the third count of the indictment charging the sale, and for an instructed verdict for the defendant, upon the following grounds:

a. The entire evidence failed to show that the defendant in error sold the liquor as charged in

the indictment, or that it was sold under his direction.

b. The testimony affirmatively shows that the defendant in error did not commit the offense of selling the liquor charged in the indictment, but the acts therein alleged, and essential to the crime charged, were the acts of other persons than the defendant in error, and without his direction, authority or consent, and that no evidence of the plaintiff connected the defendant in error with the offense charged in the indictment, but instead the proof of the plaintiff showed that the sale of liquor essential to the proof of the crime charged was another person's crime, and no competent testimony was offered to connect the defendant in error with the offense charged.

WHEREFORE, the said O. Thompson, defendant in error, prays that the judgment be reversed, and that the said Court be directed to grant a new trial of said cause.

EDWARD H. CHAVELLE,

Attorney for Defendant O. Thompson.

Received a copy of the within assignment this 28 day of Dec. 1922.

THOS. P. REVELLE,

Attorney for Plf.—D. [34]

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 28, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [35]

In the District Court of the United States for
the Western District of Washington, North-
ern Division.

No. 7069.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TOM PAPPAS et al.,

Defendants.

Order Allowing Writ of Error.

On this 2d day of January, 1922, came the defendant, Tom Pappas, by his attorney, Fred C. Brown, and filed herein and presented to the Court his petition praying for the allowance of a writ of error and assignment of error intended to be urged by him, praying, also, that a transcript of the record and proceedings and papers upon which judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial District, and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof, the Court does allow the writ of error upon the defendant giving bond according to law in the sum of sixteen hundred dollars (\$1600.00), which shall operate as a supersedeas bond.

EDWARD E. CUSHMAN,

Judge.

Received copy Jan. 2, 1923.

THOS. P. REVELLE,

Atty. for Plaintiff.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Jan. 2, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [36]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 7069.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TOM PAPPAS, C. FERGUSON, and O.
THOMPSON,

Defendants.

Order Allowing Writ of Error.

On this 27th day of December, 1922, came the defendant, C. Ferguson, by his attorney, Edward H. Chavelle, and files herein and presented to the Court his petition praying for the allowance of a writ of error and assignment of error intended to be urged by him, praying also, that a transcript of the records and proceedings and papers upon which judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Dis-

trict, and that such other and further proceedings may be had as may be proper in the premises;

On consideration whereof, the Court does allow the writ of error upon the defendant giving bond according to law in the sum of one thousand six hundred dollars, which shall operate as a super-sedeas bond.

JEREMIAH NETERER,
Judge.

Received a copy of the within order this 28 day of December, 1922.

THOS. P. REVELLE,
Attorney for Plf.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 28, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [37]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 7069.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

TOM PAPPAS, C. FERGUSON, and O.
THOMPSON,
Defendants.

Order Allowing Writ of Error.

On this 27th day of December, 1922, came the defendant, O. Thompson, by his attorney, Edward H. Chavelle, and filed herein and presented to the Court his petition praying for the allowance of a writ of error and assignment of error intended to be urged by him, praying, also, that a transcript of the record and proceedings and papers upon which judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial District, and that such other and further proceedings may be had as may be proper in the premises;

On consideration whereof, the Court does allow the writ of error upon the defendant giving bond according to law in the sum of one thousand dollars, which shall operate as a supersedeas bond.

JEREMIAH NETERER,

Judge.

Received a copy of the within order this 28th day of December, 1922.

THOS. P. REVELLE,

Attorney for Plf.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 28, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [38]

In the District Court of the United States for
the Western District of Washington, North-
ern Division.

No. 7069.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TOM PAPPAS et al.,

Defendants.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS:
That we, Tom Pappas, as principal, and George
H. Moss and Mrs. Geo. H. Moss, his wife, James
Pappas and Madiline Pappas, his wife, of Seattle,
Washington, as sureties, jointly and severally ac-
knowledge ourselves to be indebted unto the
United States of America, in the sum of
(\$1600.00) dollars, lawful money of the United
States, to be levied on our goods and chattels,
lands and tenements, upon this condition:

WHEREAS, the said Tom Pappas has sued out
a writ of error from the judgment of the District
Court of the United States for the Western Dis-
trict of Washington, in the case in said court
wherein the United States of America is plaintiff,
and said Tom Pappas is one of the defendants,
for a review of the said judgment in the United
States Circuit Court of Appeals for the Ninth
Circuit;

Now, if the said Tom Pappas shall prosecute his writ of error to effect and answer all damages and costs if he fail to make his plea good, and shall appear and surrender himself in the District Court of the United States for the Western District of Washington, and after the filing in the said District Court of the Mandate of the said Circuit Court of Appeals, and from time to time thereafter as may be required, shall answer any further proceedings, and abide by and perform any judgment or order which may be had therein or [39] rendered in this case, and shall abide and perform any judgment or order which may be rendered in the United States Circuit Court of Appeals for the Ninth District, and not depart from the said Court or District without leave thereof, then this obligation shall be void; otherwise, to remain in full force and virtue.

Witness our hands and seals this 30th day of December, 1922.

TOM PAPPAS.

GEORGE H. MOSS.

MRS. GEO. H. MOSS.

JAMES PAPPAS.

MADLINE PAPPAS.

O. K.—THOS. P. REVELLE,

U. S. Attorney.

Approved:

EDWARD E. CUSHMAN,

Judge.

Subscribed and sworn to before me this 30th day of December, 1922.

[Seal] FRED C. BROWN,
Notary Public in and for the State of Washington,
Residing at Seattle.

United States of America,
Western District of Washington,
Northern Division,—ss.

Geo. H. Moss and Mrs. Geo. H. Moss, his wife, being first duly sworn, on oath deposes and says, each for himself and not one for the other; that they are residents of the above-entitled District, and that after paying all just debts and liabilities, they are worth the sum of \$—— in community real property, subject to execution within said District, over and above all exemptions. That they are the owners of the following real property, to wit: Lots 1 and 2, block 22, Hill Tract Addition to City of Seattle.

GEO. H. MOSS.

MRS. GEO. H. MOSS.

Subscribed and sworn to before me this 30th day of December, 1922.

[Seal] FRED C. BROWN,
Notary Public in and for the State of Washington,
Residing at Seattle.

O. K.—THOS. P. REVELLE,

U. S. Attorney. [40]

United States of America,
Western District of Washington,—ss.

James Pappas and Madiline Pappas, his wife,

being first duly sworn, on oath deposes and says each for himself and not one for the other; that they are residents of the above-entitled District, and that after paying all just debts and liabilities, they are worth the sum of \$—— in community real property, subject to execution within said District, over and above all exemptions; that they are the owners of the following real property, to wit: Fairview Homestead, Ass'n. Plat N.1½ of 4/8.

JAMES PAPPAS.

MADELINE PAPPAS.

Subscribed and sworn to before me this 30th day of December, 1922.

[Seal]

FRED C. BROWN,

Notary Public in and for the State of Washington, Residing at Seattle.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. January 2, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy.

[41]

In the District Court of the United States, for
the Western District of Washington, North-
ern Division.

No. 7069.

CHARLES FERGUSON,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Bond on Appeal.

We, Charles Ferguson, as principal, and Michael Cohen, Joseph Danz and Minnie Danz, his wife, as sureties, all of Seattle, Washington, jointly and severally acknowledge ourselves to be indebted unto the United States of America in the sum of sixteen hundred (\$1600.00) dollars, lawful money of the United States, to be levied of our goods and chattels, lands and tenements, for the payment of which, well and truly to be made, we bind ourselves and each of us, our heirs and executors, jointly and severally, firmly by these presents.

The condition of the above obligation is such that whereas in the above-entitled cause a writ of error has been issued to the Circuit Court of Appeals for the Ninth Circuit from the judgment and sentence entered therein, and an order has been entered fixing the amount of the bail bond for the release of the defendant, Charles Ferguson, upon

bail, pending the determination of said writ of error by said appellate court, in the sum of \$1.600.

Now, therefore, if the said Charles Ferguson, as principal obligor, shall appear and surrender himself in the above-entitled court and from time to time thereafter as may be required to answer any further proceedings, and shall obey and perform any judgment or order which may be had or rendered in said cause and shall abide by and perform any judgment or order which may be rendered in the said United States Circuit Court of Appeals for the Ninth Circuit, [42] and shall not depart from said District without leave first having been obtained from the Court, then this obligation shall be null and void; otherwise of full force and effect.

IN WITNESS WHEREOF we have set our hands and seals this 27th day of December, 1922.

CHARLES FERGUSON, (Seal)

Principal.

MICHAEL COHEN. (Seal)

JOSEPH DANZ. (Seal)

MINNIE DANZ. (Seal)

O. K.—THOS. P. REVELLE,

U. S. Attorney.

Approved:

NETERER,

Judge.

United States of America,
Western District of Washington,
Northern Division,—ss.

I, Michael Cohen, one of the sureties within named and a resident of said District, do solemnly swear that, after paying all my just debts and liabilities, I am worth in my sole and exclusive right the sum of \$1,600 in real estate within the jurisdiction of the above-entitled court and subject to levy, execution and sale, and that I am an unmarried man.

MICHAEL COHEN.

Subscribed and sworn to before me this 27th day of December, 1922.

[Seal] WALTER METZENBAUM,
Notary Public in and for the State of Washington, Residing at Seattle.

United States of America,
Western District of Washington,
Northern Division,—ss.

We, Joseph Danz and Minnie Danz, his wife, sureties within named and residents of said District, do each solemnly swear after paying our just debts and liabilities, we are worth the sum of \$1,600 in real estate within the jurisdiction of the above-entitled court and [43] subject to execution, levy and sale.

JOSEPH DANZ.
MINNIE DANZ.

Subscribed and sworn to before me this 27th day of December, 1922.

[Seal] WALTER METZENBAUM,
Notary Public in and for the State of Washington, Residing at Seattle.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. December 28, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy.
[44]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 7069.

OLIVER THOMPSON,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Bond on Appeal.

We, Oliver Thompson, as principal, and Michael Cohen and Leo C. Jacobson, as sureties, all of Seattle, Washington, jointly and severally acknowledge ourselves to be indebted unto the United States of America in the sum of One Thousand (\$1,000) Dollars, lawful money of the United States to be levied of our goods and chattels, lands and tenements, for the payment of which, well and truly to be made, we bind ourselves and each of us,

our heirs and executors, jointly and severally, firmly by these presents.

The condition of the above obligation is such that whereas in the above-entitled cause a writ of error has been issued to the Circuit Court of Appeals for the Ninth Circuit from the judgment and sentence entered therein, and an order has been entered fixing the amount of the bail bond for the release of the defendant, Oliver Thompson, upon bail pending the determination of said writ of error by said Appellate Court in the sum of \$1,000.00.

Now, therefore, if the said Oliver Thompson, as principal obligor, shall appear and surrender himself in the above-entitled court and from time to time thereafter as may be required to answer any further proceedings, and shall obey and perform any judgment or order which may be had or rendered in said cause and shall abide by and perform any judgment or order which may be rendered in the said United ~~United~~ Circuit Court of Appeals for the Ninth Circuit [45] and shall not depart from said District without leave first having been obtained from the Court, then this obligation shall be null and void, otherwise of full force and effect.

IN WITNESS WHEREOF we have set our hands and seals this — day of December, 1922.

OLIVER THOMPSON, (Seal)

Principal.

MICHAEL COHEN. (Seal)

LEO. C. JACOBSON, (Seal)

O. K.—THOS. P. REVELLE,

U. S. Attorney.

Approved:

NETERER,
Judge.

United States of America,
Western District of Washington,
Northern Division,—ss.

I, Michael Cohen, one of the sureties, within named and a resident of said District, do solemnly swear that, after paying all my just debts and liabilities, I am worth the sum of \$1,000 in real estate within the jurisdiction of the above-entitled court and subject to levy, execution and sale and that I am an unmarried man.

MICHAEL COHEN.

Subscribed and sworn to before me this 27th day of December, 1922.

[Seal] WALTER METZENBAUM,
Notary Public in and for the State of Washington,
Residing at Seattle.

United States of America,
Western District of Washington,
Northern Division,—ss.

I, Leo C. Jacobson, one of the sureties within named and residents of said District, do solemnly swear that after paying my just debts and liabilities, I am worth the sum of \$1,000 in real estate within the jurisdiction of the above-entitled court and subject to execution and levy and sale in my own and separate right.

LEO C. JACOBSON. [46]

Subscribed and sworn to before me this 27th day of December, 1922.

[Seal] WALTER METZENBAUM,
Notary Public in and for the State of Washing-
ton, Residing at Seattle.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. December 28, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [47]

In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.

No. 7069.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TOM PAPPAS, C. FERGUSON, and O. THOMP-
SON,

Defendants.

**Order Extending Time to and Including February
15, 1922, to File Record and Docket Cause.**

For good cause now shown, it is ORDERED that the time for filing the record in the above-entitled cause in the office of the Clerk of the Circuit Court of Appeals be and the same is hereby extended to the 15th day of February, 1922.

Done in open court, this 29th day of December, 1922.

NETERER,
United States District Judge.

Received copy Dec. 28, 1922.

THOS. P. REVELLE,
Atty. for Plaintiff.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 29, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [48]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 7069.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

TOM PAPPAS et al.,
Defendants.

Order Extending Time to and Including February 28, 1923, to File Record and Docket Cause.

Upon the application of the defendant in the above cause for an extension of time within which to lodge the appellate record in the Court of Appeals, the United States Attorney consenting thereto on behalf of the plaintiff, it is by the Court ordered that the time within which to lodge and file the appellate record in the above-entitled cause

in the Court of Appeals for the Ninth Circuit, to wit, thirty (30) days allowed by law is hereby extended from and after its expiration on February —, 1923, to and including the 28th day of February, 1923, during which time said record may be returned and filed in the said Court of Appeals with like force and effect as if filed and lodged within thirty (30) days.

Done in open court this 9th day of February, 1923.

JEREMIAH NETERER,

Judge.

O. K.—DeWOLFE EMORY,

Asst. U. S. Attorney.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Feb. 9, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [49]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 7069.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TOM PAPPAS, C. FERGUSON, and O. THOMPSON,

Defendants.

**Order Extending Time to and Including April 1,
1923, to File Record and Docket Cause.**

For good cause now shown, it is ORDERED, that the time for filing the record in the above-entitled cause, in the office of the clerk of the above-entitled court, be and the same is hereby extended to the 1st day of April, 1923.

Done in open court this 23d day of February, 1923.

JEREMIAH NETERER,
United States District Judge.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Feb. 23, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [50]

In the District Court of the United States for the
Western District of Washington, Northern Division.

No. 7069.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TOM PAPPAS, CHARLES L. FERGUSON and
OLIVER THOMPSON,

Defendants.

**Bill of Exceptions of Charles L. Ferguson and
Oliver Thompson.**

BE IT REMEMBERED, that heretofore, and, to wit, on the 20th day of December, 1922, the above-entitled cause came for trial in the above Court, before the Honorable Jeremiah Neterer, one of the Judges of said Court, sitting with a jury, plaintiff appearing by Charles E. Allen, Assistant United States Attorney for said Court and district, and the defendants, Charles L. Ferguson and Oliver Thompson appearing by Edward H. Chavelle, their attorney and counsel, and defendant Tom Pappas appearing by Fred C. Brown, his attorney.

A jury having been duly empanelled and sworn to try the cause, and counsel for plaintiff having made his opening statement to the jury, thereupon the following proceedings were had, and testimony given, to wit:

Testimony of H. V. Mooring, for the Government.

H. V. MOORING, called on behalf of the Government, being first duly sworn, testified as follows:

That he is a Federal Prohibition Agent. On the 28th day of June, 1922, he had a conversation with Thomas Pappas at the entrance of the City Taxi, at 103-1/2 Prefontaine Place, Third Avenue and Yesler Way. Tom Pappas was at the door and H. V. Mooring asked him where Gus Demus was, and Pappas said he was out. Mooring said

(Testimony of H. V. Mooring.)

"I was going to get some stuff," and he said, "Why not let me fix you up?" Mooring said, "That is all right with me; what is [51] the price?" and he stated the price, and Mooring said "I want to get it to-night; I want to get down to Centralia," and he said "Where is your car," and Mooring said, "It is out at my house," and Pappas said, "We will have to go and get it then." The witness and said Tom Pappas got on a street-car and went to the house of Mooring at 130 Fifteenth Avenue, and went in the house. The defendant, Pappas said to Mooring, "You get the car ready," and asked the wife of witness if he could use the phone, and went out and used the phone, and witness went and got the car out of the garage and came in the house again, and Pappas said, "The deal is off, Harry. The boys are busy," and Mooring said, "What are they doing?" Pappas said, "They are unloading," and Mooring said, "Why not drive down there with my car and I can get my stuff and go on." Pappas said, "We cannot do business that way, but I will fix you up to-morrow," and Mooring said, "All right, that will do me as long as I can leave at night time from here." And he went away.

Mooring, the witness, then testified that the next time he heard from Pappas was about twelve o'clock the following day. He asked Pappas if he was handling much of it and he said "Quite a bit. If you want to do business with me why not order from Centralia," and Mooring said, "It is pretty dangerous that way." He said, "If you will send

(Testimony of H. V. Mooring.)

me a wire, if you want just common stuff ask for so much lubricating oil, and if you want bonded stuff say that you want high grade lubricating oil."

The witness, Mooring, then testified that the next time he saw Pappas was on the 30th, the following day. Pappas drove up and said, "I have to hire a car to get this stuff. My own car is broken down and they will not get it fixed in time." That was about twelve o'clock. Defendant Pappas then said, "I am sorry I kept you waiting but I am going after it right now. Where shall we put it?" Mooring said, "I will leave it in the garage. I will [52] leave the garage doors open and you can drive around the alleyway." He asked Mooring how many cases he wanted. Mooring said, "Just got two," and held up his fingers (indicating).

Mooring, the witness, then testified, that about four o'clock the same day, he saw Pappas again, and said to him, "Have you got it?" and he, Pappas, said "Sure," and opened the left-hand back door of his car and pointed out two sacks. Mooring said, "What did you get," and Pappas said "Pebble Ford, what you ordered." There were some other sacks, and Mooring said, "What are the others." Pappas said, "I will deliver them further on." Then Pappas said, "What are going to cover it up with?" Mooring said "This tent," and they pulled the tent over to the garage door, and Mooring said, "While you count the money out I will get the stuff out," and handed him the money a few feet outside the garage, and walked

(Testimony of H. V. Mooring.)

in the garage by the side of his car. Mooring said, "I handed him fifty-five dollars in notes I had given Mr. Anderson and the other agent a check for a few hours before, because I did not have enough, and a check for eighty dollars. Fifty-five dollars in currency and an eighty-dollar check." Witness Mooring identified the currency and the same was offered in evidence and marked for identification, same being identified by the witness as being the same money, two twenties, and a ten, and some twos and a one, and an eighty-dollar check, and marked as Government's Exhibit "I." Witness identified sacks as two sacks of liquor delivered by Pappas to him, containing twenty-four bottles of Pebble Ford, whereupon same were offered and admitted as Government's Exhibits.

Witness Mooring then testified that three men were placed under arrest, and Pappas remarked that he did not think Mooring would do anything like that to a friend, and Mooring told him he was [53] *was* not working for friends, but was working for Uncle Sam. The money was found in Pappas' hand, and he said that it was not enough. Three men were placed under arrest and turned over to Mr. Anderson, and he took them into the house. The arrest was made between three and four o'clock.

Later the prisoners were brought to Mr. Whitney's office, and further examined. Mr. Ferguson, the defendant, Mr. Mooring testified, admitted that he was hauling the stuff, but that Pappas was making the deal, and that he, Ferguson, was not

(Testimony of H. V. Mooring.)

responsible, and the liquor was not his. He was just hauling it for Mr. Pappas.

On cross-examination, the witness, questioned by Mr. BROWN, stated:

That he went with Mr. Pappas to his house, and he told the other officers in Mr. Whitney's office, that he was a deputy sheriff. That he heard him make the statement that he was working out of the Sheriff's office *office*. Witness further stated that he did not say he was working out of the Sheriff's office in this case. The license number of the car was 12,240. Mr. Pappas, when he got out of the car, did not go toward the house.

On cross-examination of the witness, questioned by Mr. CHAVELLE, witness MOORING stated:

That he never saw the defendant Thompson until he drove up in the car; that the curtains of the car were down; that Mr. Thompson remained sitting in the car until he was arrested and told to get out of the car. All the transactions were had with Mr. Pappas, and the check was made out on the front fender of Mooring's car right at the time, in the garage, some fifteen or twenty feet away from the car that Thompson was in; that Pappas had told him that he had to hire a car, earlier in the afternoon, and that his, [54] Pappas', car had broken down; that the stuff was so covered that he could not see what was in the packages; that the liquor was unloaded into the vault.

(Testimony of Maude Mooring.)

On cross-examination of H. V. MOORING, questioned by Mr. BROWN, the witness testified:

The car drove up the alleyway, and was not parked at the curb.

Testimony of Maude Mooring, for the Government.

MAUDE MOORING, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

That she is the wife of H. V. Mooring, Federal Prohibition Agent, and lives at 3216 Freeman Avenue; that on the 29th and 30th of June, 1922, she lived at 130-15th Avenue North. That she saw Mr. Pappas on the 29th day of June, 1922, at her house. He came with her husband, who introduced Mr. Pappas to her. Mr. Pappas asked to use the telephone, and said to her husband, "Well, Harry, get the car ready, and I will telephone." After he had phoned, her husband came into the room after looking after the car, and Pappas said, "Well, I guess it is off for to-night, Harry, the boys are out now after the load." Mr. Mooring said, "Can we go out in my car?" and Pappas said, "No, we cannot get it. I have three cars, and the boys have a truck." Then he left after that. Witness did not see him the next day, but that evening he said, "Well, I will deliver that tomorrow some time early in the afternoon."

(Testimony of Maude Mooring.)

On cross-examination, questioned by Mr. BROWN, the witness MAUDE MOORING testified:

That she did not remember the number of times she called up Pappas the following day.

On cross-examination, witness, questioned by Mr. CHAVELLE, testified: [55]

That Mr. Pappas had said something about his car being broken down, and said, "We have three cars, and the boys have a truck." Witness did not hear him say anything about hiring a car.

Testimony of Walter M. Justi, for the Government.

WALTER M. JUSTI, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

That he is a Federal Prohibition Agent; that he knows Mr. Pappas, and first saw him on the night of the 29th of June, 1922. Agents Mooring, Anderson, and Mr. Hillgard and Mr. Littlefield and witness went to the Athens Cafe. Witness heard no conversations, but saw Mooring and Pappas and was on the street-car with Mooring and Pappas, but it was impossible to distinguish anything they said. They went out to Mooring's house. About 2:30 o'clock the following afternoon, the 30th day of June, 1922, Mr. Pappas drove up to the house of Mr. Mooring, with Mr. Ferguson, and Mr. Mooring went out and spoke to him. Witness Justi was inside the house looking through the window, and could not hear any conversation, but

(Testimony of Walter M. Justi.)

could see Mr. Pappas and Mr. Ferguson in the car. They drove away, and Mr. Mooring returned to the house. The next time he saw the defendant Pappas, was when he put them under arrest. He saw the money and the check. At the time of the arrest, he, with other prohibition agents, were back of Mr. Mooring's car in his garage, and heard the car drive up there, but could not see it on account of their position behind Mr. Mooring's car. Then he heard someone say, "What are you going to cover it with?" and Mr. Mooring answered, "With this tent," and then he saw them drag a tent which was laying opened out on the grass there, over the garage door, and at the garage door was Mr. Mooring and Mr. Pappas, where they had the money transaction, which consisted of Mr. Mooring handing him some marked bills and a check. [56] The money and check were rolled up and had a rubber band around it, and Mr. Pappas took the rubber off, and counted the money, and he said, "This is not enough." Mr. Mooring said something like, "That makes us square, doesn't it?" and witness Walter M. Justi rushed out, together with Agent Anderson, and approached Pappas, who had the money in his right hand, and witness grabbed him by the right wrist and swung him around to Mr. Anderson, and said "Hold him, Max, and get the money," and witness Justi went on to the car, and Mr. Ferguson was in the car, and put him under arrest, and put Mr. Thompson, who was standing alongside the car, also under arrest. Then they took the defendants into Mooring's

(Testimony of Walter M. Justi.)

house and started to make a search of them for weapons, and anything of that nature. Agent Anderson said, "This fellow has got a star on him" and he pulled back Mr. Pappas' coat and he had a deputy sheriff's star, and Witness Justi said, "Take it off him," and Anderson unfastened it and took it off. The witness Justi had a book where he copied the numbers of the marked bills. The arrest was made about four o'clock. There was no further conversation had with the defendants. Four sacks of liquor and three sacks of beer were identified by the witness. None of the liquor was taken from the car.

On cross-examination, questioned by Mr. BROWN, the witness testified:

Mr. Mooring asked Mr. Pappas to assist him in pulling the tent over from the garage.

On cross-examination, questioned by Mr. CHAVELLE, the witness testified:

Mr. Thompson was standing by the car and Mr. Ferguson was in the car, and as far as he knows Mr. Thompson and Mr. Ferguson had nothing to do with the transaction. [57]

On recross-examination, questioned by Mr. BROWN, witness testified:

That he could not see the car when it drove up, and did not know who was in the car, when it drove up.

Testimony of Max Anderson, for the Government.

MAX ANDERSON, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

That he is a Federal Prohibition Agent, and was such on the 29th and 30th of June, 1922. That he saw Tom Pappas on the 29th day of June, 1922. That defendant Pappas went with Mr. Mooring on the street-car out to Mr. Mooring's house. On the 30th day of June, 1922, he saw Mr. Pappas, Mr. Ferguson and Mr. Thompson at Mr. Mooring's house; that the witness was with other prohibition agents at the house of Mr. Mooring, behind the car of Mr. Mooring's in his garage; another machine came up, but he did not see who was driving it, but he thought Mr. Ferguson was sitting at the wheel. Mr. Pappas stepped over to the garage, and Mr. Thompson was standing alongside the machine. Mr. Mooring made a deal to buy some whiskey and paid some money over to Mr. Pappas. The money was in Mr. Mooring's possession when witness first acted. It was handed over to Mr. Pappas. Mr. Mooring said to Pappas, "Count the money and see if it is correct," and he said, "All right, boys, bring it here," and then we stepped out and Mr. Justi grabbed the arm of Pappas, and he had the money in his hand, and witness Anderson took it away from him. Defendant Pappas had a special deputy sheriff's star, which witness Anderson took. Witness asked him what he carried it for. He did not say anything at the time, but they took him in the house,

(Testimony of Max Anderson.)

and then Pappas said he was a deputy sheriff, and had been working on Ferguson and Thompson for some time, to get them. [58]

Mr. CHAVELLE.—I object to that.

The COURT.—The objection is sustained.

Mr. BROWN.—I think it is admissible as conversation between the parties.

The COURT.—Propound the question again.

(Last question read.)

The COURT.—He may answer.

Mr. CHAVELLE.—Exception.

Mr. ANDERSON.—(Continuing.) Mr. Pappas said he was a deputy sheriff, and had been working on Ferguson and Thompson for some time to land them for selling liquor. At the time of the arrest the liquor was in the back of the car, and Mr. Pappas was at the garage. Mr. Ferguson was at the wheel of the machine, and Mr. Thompson was standing alongside the machine. The liquor was packed in common gunny sacks. The time of the day was about half past three or four o'clock.

The witness accompanied the defendants to Mr. Whitney's office. The only conversation witness heard was in Mr. Whitney's office, when Mr. Pappas said to Mr. Mooring, "I never thought you would do this to me." Mr. Ferguson did not say anything in the presence of witness. Witness did not hear Thompson say anything. He stated that he heard Mr. Thompson say at the garage that "I was just

(Testimony of Max Anderson.)

riding with these people” and Mr. Ferguson said he was just hauling this load for Mr. Pappas.

Witness ANDERSON, on cross-examination, questioned by Mr. BROWN, testified:

That he saw through the glass in the back of the machine; that he could see Mr. Pappas, who was the only one of the defendants in the garage; he could see the upper part of his body, and saw the roll of money pass to Mr. Pappas. It was not rolled up, but [59] was spread out. Mr. Mooring said, “Count it,” and witness then arrested Mr. Pappas. He took the money from Mr. Pappas and searched him, and found a badge on him; that Mr. Ferguson did not blame any one for his arrest; Mr. Ferguson was in the car all the time, until he was arrested and then taken into the house.

MAX ANDERSON, on cross-examination, questioned by Mr. CHAVELLE, testified:

Mr. Ferguson, just as soon as he got a chance to say anything, said his car was hired, and that Mr. Thompson was just riding along; that witness was looking through an oval glass 7x24, in the back of the machine, and saw the transaction.

On redirect examination by Mr. ALLEN, witness MAX ANDERSON, testified:

Q. Counsel inquired about the car; Mr. Ferguson said it was his car, did he not?

A. Yes, sir.

(Testimony of W. M. Whitney.)

Mr. CHAVELLE.—I object to the question on the ground it is leading, and ask to have the answer stricken.

The COURT.—I will let the answer stand.

Testimony of W. M. Whitney, for the Government.

W. M. WHITNEY, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

“My name is William M. Whitney. I am Assistant Prohibition Director and Legal Advisor. I know Mr. Ferguson and Mr. Thompson. I have known them for nearly a year, not quite that long, and I saw Mr. Pappas for the first time on the afternoon of June 30, 1922.”

Q. Did you have a conversation with them on the afternoon of June 30th. A. I did. [60]

Q. What was it?

Mr. CHAVELLE.—I object to the question on the ground that it is incompetent, immaterial and irrelevant and no proper foundation laid for it.

The COURT.—A conversation when?

Mr. ALLEN.—On the 30th of June this year.

Q. I will ask you where?

A. In the prohibition director's office after he was taken down by Mr. Anderson. I talked with all three of them.

Q. What did Mr. Pappas say?

A. Mr. Pappas at that time stated that he had employed or gotten in touch with Mr. Ferguson to deliver some whiskey---

(Testimony of W. M. Whitney.)

Mr. CHAVELLE.—I object to the conversation for the reason that it is incompetent, irrelevant, immaterial and no proper foundation has been laid for the question; no showing whether the statement was voluntary or involuntary and whether the defendants were under arrest.

The COURT.—The defendants were all together there?

A. The conversation—my examination was separately, but I warned each one of them first of their constitutional right and told them they did not have to say anything, and anything they said would be used against them, and they did not have to say anything that would incriminate themselves, and what was said would have to be said freely and voluntarily.

Mr. CHAVELLE.—I object to what Mr. Pappas said as not being in the presence of Mr. Ferguson or Mr. Thompson.

The COURT.—The jurors will not consider any statements on the part of Mr. Pappas with relation to any of the other defendants, that was not made in the presence of the other defendants. Let me ask you, Mr. [61] Allen, does this statement you are seeking to elicit from Mr. Pappas, is that with relation to himself more particularly, or to the other defendants?

Mr. ALLEN.—The statement that Mr. Pappas made to Mr. Whitney was with relation to himself. I will limit my question to that extent.

The COURT.—Yes.

(Testimony of W. M. Whitney.)

Q. State the conversation with Mr. Pappas as far as it related to himself.

A. Yes, I asked him how he got in this jam, or words to that effect, and he stated that he was a deputy sheriff, that he had a commission and badge, and I had them lying before me, and stated that he was a deputy sheriff, and I asked him if he had not made the deal to sell this whiskey to Mr. Mooring himself, and he said he had, and I asked him if he had any other relation with anybody else, and he said he had not, that he dealt solely and wholly with Agent Mooring with reference to the sale of these two cases of whiskey, and I asked him if he had communicated with Mr. Starwich, and he said he had not talked with Mr. Starwich for more than three weeks; he stated he had only received pay on one or two occasions, which was something more than a year previously, and then he was paid for finding a still, but that was over a year prior to this affair. I asked him if he were in good faith working as a deputy sheriff, why he had not communicated with Sheriff Starwich, and he said he had talked two or three days previously with Deputy Sheriffs Hill and Ramage, about apprehending Mr. Ferguson.

Mr. CHAVELLE.—I object to any conversation about Mr. Ferguson.

The COURT.—The jurors will disregard any statements [62] made by Mr. Pappas as to the defendants Ferguson and Thompson.

(Testimony of W. M. Whitney.)

A. (Continued.) I then asked him if he had notified the sheriff's office or any of the deputies in the sheriff's office, or any representative of that office, as to this deal with Mr. Mooring, and he stated he had not. I asked him if he intended to arrest Mr. Mooring or Mr. Ferguson or Mr. Thompson or any one else, and he said he did not intend to arrest them at that time, but intended to report to the sheriff's office later, and I asked him if he did not intend to make an arrest how he expected me to believe he was acting in good faith as a deputy sheriff, and he then stated he thought if he could play Mr. Ferguson along he might find out where he kept his cache.

Mr. CHAVELLE.—I object to that for the same reason.

The COURT.—Yes. The jurors will disregard that.

A. (Continuing.) I do not want to answer improperly, but in order to state—

The COURT.—I understand.

A. (Continuing.) And then I asked him about the money, whether the money had not been given to him by Mr. Mooring, but he said it was not the price that was agreed upon; he understood it was seventy dollars a case and Mr. Mooring only gave him a hundred and thirty-five dollars, and I then asked him if he had seen Mr. Starwich in any way, shape or form regarding this transaction and he said he had not talked to Mr. Starwich at all about this, but that he had only been requested

(Testimony of W. M. Whitney.)

—or he had talked to Mr. Hill and Mr. Ramage some days prior, and I asked how much whiskey was in the car, and he said four sacks and some beer. I asked him how they were riding out there, and he said the three of them were in the front seat, and Mr. Ferguson was driving the car. I asked him where [63] he had gotten in touch with Mr. Ferguson—

Mr. CHAVELLE.—I object to that. I do not think that is fair to tell that to this jury. Certainly not.

The COURT.—I am inclined to think that is getting—

Witness WHITNEY.—(Continuing.) He stated to me that he had seen Mr. Mooring the night before and had gone out to his house to talk over this transaction, stating that Mr. Mooring had first approached him in the Athens Cafe regarding the sale of whiskey, and he had gone out to Mr. Mooring's house on the night previous to the arrest, and stated also he had gone out in the afternoon, about an hour and a half previous to the arrest, and then stated he had been picked up about a little after four o'clock at the Times Building, and taken out again to Mr. Mooring's house where they were arrested. I remember one other matter that happened during the course of the conversation. Mr. Mooring came in at the close of the interview and Mr. Mooring asked him when he was stating that he was acting as a deputy sheriff, if he, Pappas, had not stated to Mr.

(Testimony of W. M. Whitney.)

Mooring at the time of the arrest, "Harry, I did not think you would do this to me," and he stated that was the conversation or remark that had been passed.

On cross-examination of W. M. WHITNEY, questioned by Mr. BROWN, he stated:

That Pappas had made some remark about picking up the corner of the tent, or there was a tent they were going to put over the whiskey.

Q. He did tell you in that conversation that he had had a conversation and had been talking with Mr. Hill and Mr. Ramage about Mr. Ferguson some days prior?

Mr. CHAVELLE.—Just a minute. I object to that. He is attempting to secure by cross-examination what the [64] Government could not get by direct-examination.

(Last question read.)

Mr. BROWN.—This goes to the gist of the defense of Mr. Pappas. If he acted in conjunction with the sheriff's office he could not be convicted here.

The COURT.—I think that the question should be answered, and the jury will not consider this as any evidence against Mr. Ferguson.

A. Yes, he made some mention of that.

Q. Did he tell you also that Sheriff Starwich had instructed Mr. Hill and Mr. Ramage to run this gang of bootleggers down?

Mr. CHAVELLE.—I object to that.

(Testimony of W. M. Whitney.)

Mr. BROWN.—It is not anything to laugh about, Mr. Whitney. You are a witness here.

The COURT.—Let him answer.

A. No, sir, he did not tell me or that Mr. Starwich had told his deputies.

Whitney, the witness, then testified, that Pappas had said “I went to Mr. Hill and Mr. Ramage, and told them that I believed I could get Ferguson, and they requested me to do it if I could.”

On redirect examination, the witness, WHITNEY, testified:

That he had conversation with Mr. Ferguson on the 30th day of June, 1922. Mr. Ferguson stated that he had gone to Mr. Mooring’s house in the afternoon, in his, Ferguson’s machine, with Pappas to look the place over, and then he came down town and stopped at the Windsor Pool Hall, and picked up Mr. Thompson, and drove out to Magnolia, where four cases of whiskey and four or five [65] sacks of beer were thrown into his machine. He and Thompson drove back, and picked up Mr. Pappas, and drove out to Mr. Mooring’s house. He stated that it was not his whiskey, and that he was transporting it to be sold and delivered to Mr. Mooring.

Mr. CHAVELLE.—I object to that answer as far as it refers to the defendant Thompson.

The COURT.—I instructed the jury yesterday, and I will again instruct them, that any statements made by any of the defendants will only be con-

(Testimony of W. M. Whitney.)

sidered as against themselves, and not against any other defendant, unless they were present when the statement was made.

Witness then testified that he had a conversation with Mr. Thompson. Mr. Thompson stated that the whiskey was not his, but that he had been picked up by Mr. Ferguson in Mr. Ferguson's car, and Mr. Ferguson had told him that he had a little job to do to go out on Queen Anne or some place, and take some liquor up to Capital Hill, and he rode out with Mr. Ferguson in the car, and the liquor was thrown in the car, and they drove down and picked up Mr. Pappas and went to Mr. Mooring's house, where they were arrested. Stated that he had known Mr. Ferguson for quite a while, and had worked with Mr. Ferguson, been his engineer on one of his boats in times previous; both Mr. Ferguson and Mr. Thompson stated the whiskey was not theirs; they had simply hauled it and delivered it out there for another party, knowing it was whiskey that had been put in the car; that they did not receive the money, and were simply to be paid for transporting it; they stated that all three rode in the front seat of the car, and the liquor was in the rear of the car. [66]

On recross-examination of W. M. WHITNEY, questioned by Mr. BROWN, witness testified:

That he had a memorandum of the license number of the car, which was 12240, that the car was a Studebaker.

(Testimony of W. M. Whitney.)

On cross-examination, questioned by Mr. CHAVELLE, the witness, W. M. WHITNEY, testified:

That Thompson had told him that he was a marine engineer by occupation and had been employed as an engineer for Mr. Ferguson, said that he simply rode out in the machine because Mr. Ferguson asked him to ride out and go along with him, and come back; they said they were hired by Mr. Pappas. At the time of the conversation with the defendants, Mr. Anderson was there, and Mr. Littlefield came in, and Mr. Mooring was there, all Federal Agents. Mr. Mooring said he never saw Thompson until he came out in the car; that Mr. Justi said Mr. Thompson was with the party.

Testimony of L. Reagan, for the Government.

L. REAGAN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

That he is a Federal Prohibition Agent; that he saw the defendants on the 30th day of June, 1922, in the Federal Prohibition office.

Q. What did you hear Mr. Pappas say at that time?

A. Mr. Pappas claimed to be a deputy sheriff and he said he was out to catch Mr. Ferguson.

Mr. CHAVELLE.—I object to that as far as Mr. Ferguson is concerned.

The COURT.—The objection is overruled. I will state this, gentlemen, I have instructed the

(Testimony of L. Reagan.)

jury from time to time, or suggested to them on these objections, that no statements made in the absence of a defendant may be considered as against him. That [67] rule is rather broadly stated, and that in substance will still stand, but I may modify that some upon the instructions, upon this theory—well, I will not say anything further now. Proceed.

Q. Go ahead and tell what the conversation was.

A. The defendant Pappas was warned of his constitutional rights by Mr. Whitney and myself, and he claimed that he was a deputy sheriff and that he was out to get Ferguson, or find his cache, and the question was asked if he had mentioned this to the sheriff's office or to Matt Starwich, and he said he did not, and that he was trying to locate Ferguson's cache.

Witness continuing, testified: That he was present when the witness Ferguson was examined, and Ferguson said he knew nothing about this liquor, and the liquor belonged to Mr. Pappas, and he had been hired by Mr. Pappas to go out and get the liquor at Magnolia Bluff, and Mr. Thompson said he went along with Mr. Ferguson. Mr. Ferguson said he got ten dollars a case for bringing the liquor in.

On cross-examination by Mr. CHAVELLE, witness REAGAN testified as follows:

In conversation with Mr. Ferguson, Mr. Ferguson said he had nothing to do with the liquor ex-

(Testimony of L. Reagan.)

cept as a freighter. He said he was hired by Mr. Pappas to go out and get the liquor. He had so much per case; that the price was ten dollars per case; that while the liquor was packed in sacks, the common expression is twelve bottles to the case, whether they are in sacks or anything else; that the same was true as to the beer. He was to get ten dollars a case for that too. [68]

Testimony of T. W. Kline, for the Government.

T. W. KLINE, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

That he is prohibition agent and custodial of all liquor. Liquor offered in evidence.

Mr. CHAVELLE.—I object to it being offered in connection with Mr. Thompson on the ground that no connection has been shown between this liquor and Mr. Thompson.

The COURT.—The objection is overruled.

Thereupon the Government rested. This was all the testimony and evidence offered by the Government on behalf of the prosecution. [69]

DEFENDANTS' CASE.

Testimony of J. C. Hill, for Defendants.

J. C. HILL, called as a witness on behalf of the defendant, Tom Pappas, being first duly sworn, testified as follows:

Direct Examination by Mr. BROWN.

That he is a deputy sheriff under Matt Starwich,

(Testimony of J. C. Hill.)

and has been working under Matt Starwich for two years; that he has been a resident of Seattle for about thirty years, and a peace officer since 1903; that he has known Mr. Pappas for the past two years; that he saw Mr. Pappas previous to the 29th day of June, 1922, at the Sheriff's office.

Q. Who was there?

A. The sheriff, Matt Starwich, and Mr. Ramage and Mr. Pappas.

Q. Did Matt Starwich give you instructions in the presence of Mr. Ramage and Mr. Pappas?

A. He wanted us to go out and see if we could not stop the bootlegging in the Ballard district, and we told him we could not get out there in our machine; that they would be gone before we got to the beach, because everybody knew we were in town, and he got us to get Mr. Pappas and Mr. Pappas took his machine out and took us out there and showed us the stuff; he had a closed car with Mr. Ramage and I. Mr. Pappas gave us the license number of Ferguson's machine. We sent Mr. Pappas out on the job, but we were in touch with each other all of the time.

Q. Did he give you any information about Mr. Ferguson?

Mr. CHAVELLE.—I object to that as being incompetent and improper.

The COURT.—The objection is sustained.

Q. Did he at any time say anything about this [70] transaction in regard to the delivery of liquor at Mooring's place?

(Testimony of J. C. Hill.)

Mr. CHAVELLE.—I object to that; that would not bind us at all.

Q. Do you remember the time of his arrest under this case? A. I do.

Q. Did you have any information as to his activities previous to that?

A. We knew what he was doing all the time.

Q. What was your knowledge as to what he was doing?

A. He was supposed to get this dope for us out there—

Mr. CHAVELLE.—I object to that and ask to have it stricken.

The COURT.—The objection is sustained to what he was supposed to be doing.

Q. What was the conversation that you had with him relative to this transaction?

Mr. CHAVELLE.—I object to that if the conversation was not in the presence of the other defendants.

The COURT.—I understood he had already stated what the directions were and the authority.

Q. Did he make a report to you afterwards?

A. Yes, sir.

Q. What was the report?

Mr. CHAVELLE.—I object to that, what report was made without the presence of my client.

The COURT.—The objection is sustained.

Q. Did you have any information previous to the arrest that this transaction was going to take place?

A. We knew that it was sooner or later to come off, because he had got their confidence. [71]

(Testimony of J. C. Hill.)

Mr. CHAVELLE.—I object to that, and ask to have the answer stricken and the jury cautioned not to regard it.

The COURT.—I think it should be stricken.

Mr. BROWN.—This goes to the question of the good faith of the defendant Pappas.

The COURT.—But there are other parties on trial here. I have permitted him to testify to the reports that were made, and the activities, but what was done as to the individuals named that would not be permissible.

Q. What reports did Mr. Pappas give to you about his activities previous to the arrest?

Mr. CHAVELLE.—That would not bind my client.

Q. Previous to the 30th of June?

Mr. CHAVELLE.—I object to that.

The COURT.—Did he make a report to you of any activities?

A. Yes, sir.

Q. What was the report?

Mr. CHAVELLE.—I object to that.

The COURT.—The report if it names individuals on trial here cannot be permitted.

Q. Omit the names, Mr. Hill, and give the report that Mr. Pappas made, previous to the 30th of June, relative to his activities upon which he had been assigned.

A. He said he was gathering information out there, and he said he would have things lined up in a little while so he would get the confidence of the people he was working on, and be able to get the information about their cache. [72]

(Testimony of J. C. Hill.)

Witness HILL then continued, and testified that Pappas said he would have things lined up in a little while so he would get the confidence of the people he was working on, and be able to get the information about their cache. That he would be able to cause the arrest of certain persons with five cases; that he was told that they did not want that, that they wanted to know where the cache was; that he said he had an engagement with certain persons in connection with some liquor, and took the telephone numbers of the witness at his home and office.

On cross-examination, the witness, questioned by Mr. CHAVELLE, testified:

That Pappas was a special deputy sheriff; that he did not draw a regular salary, and was paid for what he did. Pappas had witness Hill's and Mr. Ramage's telephone numbers, and the sheriff's office number. There was always someone in the sheriff's office. He did not call the witness up on the night he was arrested. Witness did not authorize Mr. Pappas to sell any liquor and take money for it.

On redirect examination by Mr. BROWN, witness HILL testified:

That Pappas was deputized to gain the confidence of the other parties so that he could find their cache.

On cross-examination, questioned by Mr. ALLEN, the witness testified:

On the day in question Mr. Pappas notified him

(Testimony of J. C. Hill.)

that he had been talking with these men; he was there the day before he made the deal; he was there practically every day, and probably talking with the parties nearly every day. Pappas was working out of the sheriff's office, with witness and Ramage; the sheriff told them to take Pappas out and work with him. The sheriff gave [73] them the orders. It was through the efforts of Mr. Pappas that the biggest still that was ever got in the country, was located and seized; Pappas did not have any duties at all; that he did not know the purpose of the deputy's commission that had been issued to Pappas.

Testimony of Earle Ramage, for Defendants.

EARLE RAMAGE, called as a witness on behalf of the defendant Pappas, being first duly sworn, testified as follows:

That he has lived in Seattle for about twenty-two years; that in June, 1922, he was working as a deputy sheriff under Matt Starwich, and had occasion to see Tom Pappas about that time. Mr. Pappas was in the office and the sheriff called the witness in, together with Mr. Hill, and he turned the case over to them, and told them to take care of it.

Q. And what was the conversation at that time?

A. Why, Mr. Pappas had been doing some work previous in that respect, and he called at the office to see the sheriff about this particular case, and the sheriff turned him over to Mr. Hill and myself, and told us to take care of it.

(Testimony of Earle Ramage.)

Q. What did he tell him to do?

A. He had been after this case for a considerable time and we told him to go ahead and get what he could on them.

Q. Was he to find a cache? A. Yes, sir.

Q. And was there any evidence as to the amount of liquor in the cache?

A. The evidence we had—we had several reports, and also had a report that—

Mr. CHAVELLE.—I object to that.

The COURT.—Proceed.

A. And the way the deal was to come up, he came to us, [74] I think the morning previous to the time he got in this trouble, and he said he could get five cases delivered, and I went to see the sheriff, and the sheriff said, “We do not want five cases; we want his cache,” and I told Tom that, and I think he was in the office at the time, and he said, “All right,” he would do that, and we were to wait for them and he was to call us up and we were to wait for him at the office and we were going up and make the arrests when the liquor was delivered to him by this man Ferguson.

Mr. CHAVELLE.—I object to that.

A. (Continued.) And from there he was to go to the cache. He was to take a load to Spokane.

Mr. CHAVELLE.—I object to that.

The COURT.—Proceed.

Q. You knew there was to be a delivery that he was mixed up in that at that time? A. I did.

Mr. ALLEN.—I object. He already testified what the conversation was, and that is enough.

(Testimony of Earle Ramage.)

Q. Was there any specific instruction that he should do anything necessary to gain the confidence of these parties?

Mr. ALLEN.—I object to that.

The COURT.—The objection is sustained.

Q. What was the conversation?

Mr. ALLEN.—I object on the ground that he has already stated it.

The COURT.—Was anything else said?

A. There was nothing else stated.

On cross-examination of witness EARLE RAMAGE, questioned by Mr. CHAVELLE, witness testified: [75]

That he has known Mr. Pappas for one year; that Pappas had his home telephone number, and also Mr. Hill's so that he could get in touch with them at any time. He was up to see witness the day previous to the time he got in trouble. He got in touch with the sheriff after he was in jail. Witness did not give Pappas any instructions to buy liquor, nor to sell any, nor to transport any, nor to take any money for the same. The deal was between the sheriff, Pappas, Hill and witness Ramage.

On cross-examination, questioned by Mr. ALLEN, witness testified:

Mr. Pappas came to see witness was either the day before, or the day he got into trouble. The first time he called witness' attention to Mr. Ferguson and Mr. Thompson, was quite a while be-

(Testimony of Earle Ramage.)

fore his arrest. He took witness out there in his machine.

Q. When was the next time he mentioned it?

A. He came up to see us every time Mr. Ferguson came to see him, he came up to tell he was getting along better with them.

Mr. CHAVELLE.—I object to that as immaterial and prejudicial to the rights of my clients.

The COURT.—It may be stricken.

The witness RAMAGE, continuing, testified that the last time he talked to Pappas was in the afternoon before his arrest. Pappas came to him in the afternoon and said he had a deal on so that he could get on to the transaction, but did not indicate anything at all.

Q. What did he say?

A. He came in and told me that he had the deal all fixed up. [76]

Mr. CHAVELLE.—Just a minute. I do not want the witness to mention the names of these defendants in that manner, because it is certainly prejudicial.

The COURT.—Do not mention the names of the parties. Proceed.

Witness then stated that Pappas had come to see him while he was in Judge Dalton's court; that he got paid for a case in which a still was seized, and also got paid on a case of a colored lady, turned over to the Police Department.

Testimony of Tom Pappas, for Defendants.

TOM PAPPAS, one of the defendants, called as a witness on his own behalf, being first duly sworn, testified as follows:

That he has resided in Seattle for thirteen years; that for three years he was in the restaurant business, and for five or six years in the taxi business, and is located at the Frye Hotel; that he has had a deputy sheriff's commission for five years.

Q. (By Mr. BROWN.) Calling your attention to this particular transaction, the date of your arrest previous thereto, did you have any conversation with the sheriff, Matt Starwich, in the presence of Mr. Hill and Mr. Ramage?

A. Yes, sir.

Q. Tell the jury what that was.

A. Well, I told Matt Starwich the case about Ferguson—

Mr. CHAVELLE.—Just a minute. I object to that as far as it affects either Mr. Ferguson or Mr. Thompson.

Mr. BROWN.—It is hard for the witness to eliminate that, and everybody knows what we are talking about.

Mr. CHAVELLE.—I object to the remark of counsel, as prejudicial, and I object to the question.

[77]

The COURT.—I think I will have to cover this whole matter by the instructions to the jury when the case is finally submitted. I am inclined to think that the rule of law applicable and upon which I

(Testimony of Tom Pappas.)

would instruct the jury is that if the jury believe from all the evidence presented that there was a conspiracy confederation entered into between the defendants in this case to do the things charged in this information, that the statements made by any one of the defendants in the absence of the other defendants may be considered to determine whether they did the acts charged in the information—not that they could be found guilty of conspiracy in this case to violate the National Prohibition Act, but if the conspiracy or confederation was entered into between the parties, then a statement made by any of the parties who entered into the confederation or conspiracy to do the things charged here, could be received in evidence against all the parties who are charged here, and who participated in the actual thing. I will finally dispose of this in my instructions to the jury, as to whether any statements as I have heretofore intimated, may be received against any one of the defendants where the statement was not made in his presence, but I am simply stating this to you now so that you will all be advised just the thought that is in my mind. Proceed.

Mr. CHAVELLE.—Will the Court let the witness answer this question?

The COURT.—He can answer. [78]

Mr. CHAVELLE.—Note an exception.

(Last question read to the witness.)

Q. Go ahead and tell the conversation.

A. And Mr. Matt Starwich called Mr. Ramage and Mr. Hill in, and told them that I should go

(Testimony of Tom Pappas.)

in the other office and talk over the matter and they would give me the instructions what to do.

Q. What instructions would they give you?

A. They told me to go out and locate Ferguson's house.

Mr. CHAVELLE.—My objection goes to all of this, and I want to note an exception.

The COURT.—Yes.

A. (Continuing.) But he did not dare to take the sheriff's car but we could use one of my cars, because I had been using my car right along, and we went out and located his house.

Q. Was that at night?

A. In the afternoon, and at night they sent a boy out there from the sheriff's department, planted him out there to stay all night and watch Ferguson's movements. He did not find anything that day and in five or six—

Mr. ALLEN.—The witness should only testify as to what he knows from his personal knowledge.

The COURT.—State what you yourself did.

A. (Continuing.) And then I went to the office and they told me which way was the best way to find out, and I said, "I do not know."

Q. What were you trying to find out?

A. I was trying to find out 200 cases that Mr. Ferguson was supposed to have at Ballard Beach.

Q. And what took place?

A. And I can get five cases— [79]

The COURT.—Not the conversation, but what he did.

(Testimony of Tom Pappas.)

A. (Continuing.) And they told me to go out there and gain confidence with Ferguson.

Q. What did you do?

A. And I told Ferguson—

Q. Did you go to see Mr. Ferguson?

A. Yes, sir.

Q. When did you first see him?

A. I saw him before that. He came down there all the time.

Q. After they gave you the instructions what did you do?

A. In the meantime this Mooring came down there.

Q. Never mind about Mooring. Did you see Ferguson before you saw Mr. Mooring?

A. Yes, sir.

Q. What was that conversation?

A. I told him if there was any possible chance to get 25 cases on the other side of the mountains and he said, "Yes," and I said, "I do not believe you have that much whiskey; I would like to see where this liquor is," and he did not like to take me down there, and he went back there, and I told Mr. Hill and Mr. Ramage what I did, and they said to try to get his confidence in any way you can—

The COURT.—Do not give us so much conversation with the sheriff's office.

Q. What did you do?

A. What did I do when?

Q. After you had gone out to see Mr. Ferguson and asked if he could make a delivery of 25 cases

(Testimony of Tom Pappas.)

east of the mountains then you went back and made a report? A. Yes. [80]

Q. Then what did you do?

A. At that time this Mooring came down.

Q. Had you seen Mr. Mooring before?

A. Yes, sir.

Q. Where did you see him?

A. I saw him upstairs in the Triangle Building.

Q. Across from the Frye Hotel? A. Yes, sir.

Q. Have you an acquaintance with him?

A. Yes, sir. I met Mr. Mooring and he asked me to have a drink, and I never touched a drink in my life.

Q. When he came down to see you, what conversation did you have with him?

A. *If* asked me if I can get—

Q. Did he ask you where a certain place was, if you had been there before? A. What?

Q. Did he ask you where that bootlegging establishment was? A. Mr. Ferguson?

Q. No, Mr. Mooring.

A. Yes, the place upstairs, he knew the place himself.

Q. What did he say about this other place upstairs?

A. He used to go up there and drink all the time.

Q. Let us get down to this last time, did he say anything about it, the people had gone?

Mr. ALLEN.—I do not think that would be material.

(Testimony of Tom Pappas.)

The COURT.—Proceed.

Q. What conversation did you have with Mr. Mooring?

A. He asked if I knew any place where he could get [81] whiskey, he would like to take it to Centralia, and I said no, I was trying to think, and I said, “I know a party I can give you an introduction to that night”—

The COURT.—Who was this that was asking for whiskey to take to Centralia?

Mr. ALLEN.—Mr. Mooring.

The COURT.—Was it one of these defendants that was asking for whiskey to take to Centralia?

Mr. BROWN.—As I remember Mr. Mooring testified that he came down—

The COURT.—Oh, Mr. Mooring.

Mr. BROWN.— —and said he had negotiations with Mr. Pappas about two cases of whiskey that he wanted to take to Centralia, and I am going over that, and give his version of the conversation.

The COURT.—I do not want him to unnecessarily refer to these defendants.

Mr. BROWN.—There is nothing said about these defendants at that time.

The COURT.—Proceed.

A. (Continuing.) So Mr. Mooring asked me if I knew where he could buy two cases of whiskey to send to Centralia, and I said to him “I do not know; I know a party if I can communicate with

(Testimony of Tom Pappas.)

him to-night that you might do business with him."

Q. When was this, in the morning?

A. This was in the evening. And he said, "Can you get him now?" And I said, "I will try." And in the meantime I said, "How are you going to take the whiskey?" I wanted to know where it was at, and he said, "I have my house here; I can show you, and I have my car," and I said "I would like to see it," and he took me [82] up there and showed me his house, showed me his car, and I said, "All right, as soon as I get this fellow I will send him to you and you do business with him," and he said "I would like to do business with you."

Q. Never mind that. What did you do then?

A. I was meeting Mr. Ferguson.

Q. You tried to meet Mr. Ferguson?

A. Yes, sir.

Q. Did you eventually talk to him about this?

A. Yes, sir, to Mr. Ferguson.

Q. And what was your purpose in negotiating this transaction?

A. I thought if Mr. Ferguson went to get this whiskey for Mr. Mooring he would take me to the cache.

Mr. CHAVELLE.—Just a minute. My objection goes to all this testimony.

Mr. BROWN.—The intent with which he acted would be proper.

The COURT.—Yes, proceed.

(Testimony of Tom Pappas.)

A. (Continuing.) Well, I got Mr. Ferguson that next morning and I told him that there was a party liked to buy some whiskey, and would he like to sell them, and he said, "Yes," and I told him who the party was, that he lived at Fifteenth and John or Thomas, I do not remember exactly, and he said he would like to see him.

Q. At this time did you have a conversation or make a report to the sheriff's office about the matter?

A. Yes, sir; I told them to-morrow sometime I will meet you. I do not know what time I will meet the two fellows together. They did not know Mooring, but they knew Ferguson. I said, "As [83] soon as I make the transaction I will let you know."

Q. Where did you tell them you were going to make this transaction? A. I did not know yet.

Q. Now what did you do then?

A. Well, then, they said all right. I got the telephone numbers at the office and everything, and so I went out there with Mr. Ferguson and he said "Let us go out and see this fellow." He did not trust me very well, I guess, and he came down with his car and we went up there, and Mr. Mooring was in the back yard, and I said, "There is the fellow," and he came up and he said "Have you got the stuff," and I said, "No, not yet, but he is going to get it," and he said, "All right, I want two cases," and Mr. Ferguson pulled away, and

(Testimony of Tom Pappas.)

I thought he was going to his cache, and I was thinking—

Mr. CHAVELLE.—I object to what the witness thought.

Q. What conversation did you have with Mr. Ferguson after leaving the place for the cache?

A. He said, “We have to stop at Sixth and Pike before we go out there.”

Mr. CHAVELLE.—I object as not responsive to the question, and the question is leading.

The COURT.—What conversation did you have with Mr. Ferguson, your attorney asked you?

A. That is the conversation we had. He said, “We are going out there now and we have to stop at Sixth and Pike” he said, and I said, “All right,” and I said, “What are you going to do there?” and he said, “I want to get my partner; he is in the pool-room,” and he got out of the machine and brings Mr. Thompson. That was the first time I ever seen Mr. Thompson. I never seen him before, and they talked it over outside the pool-room, and he said, “This [84] time we have to go there alone, and I shall make this delivery, we will go out there and get the big stuff that goes to the other side of the mountains, and then we will take you to the cache,” and he said, “We will have to let you off now, and we will be back in twenty minutes and get you.”

When they returned, witness Pappas testified, they drove out to Mr. Mooring’s house.

Q. They went to Mr. Mooring’s house?

(Testimony of Tom Pappas.)

A. Yes, sir. I got off the car and I was going to the house to call up the sheriff's department, without giving any suspicion up there.

Q. What was your purpose then?

A. To watch Mr. Mooring, when they pulled out.

Q. You were going to notify them there were two cases of whiskey there?

A. Yes, sir; and Mr. Mooring called me back, and said, "Just a minute," and he had a big tent in the grass and he said, "Get ahold of this tent," and I thought he want the tent to cover the garage some place, to get the whiskey in, and I got one end and he got the other and he pulled me close to the garage and he said, "Hold this," and before I dropped the tent down he put a bunch of money in my hand and he said, "You take this." I did not know whether it was money or what, and there was a rubber band around it, and I said, "This does not belong to me"—before I had a chance to say, "This does not belong to me," two officers came out and said, "You are under arrest."

Witness Pappas further testified that all he had to do was to bring Ferguson and Mooring together to make the transaction among themselves, and as soon as he pulled away they would get Mooring and get the cash, and go to the sheriff's department.

[85]

On cross-examination, questioned by Mr. CHAVELLE, defendant PAPPAS testified:

That he was employed by the sheriff to find Mr.

(Testimony of Tom Pappas.)

Ferguson's cache, and that his transaction with Mr. Mooring was leading up to the arrest of Ferguson; that he did not introduce Mr. Mooring and Mr. Ferguson, and did not have any conversation with Mrs. Mooring previous to the arrest; that he did *not* Mrs. Mooring that he would bring out two cases of liquor. Mr. Mooring told him he wanted to take the liquor to Centralia. Pappas did not tell him how much he would charge him for it. Mooring asked what kind of stuff it was, but Pappas told him he did not know; that he had never seen Thompson before; that Mooring gave Pappas the money, that the money was found in his hand, and the minute he got the money, before he could say anything, he was under arrest. They discovered the sheriff's badge upon him. Mr. Ferguson thought Pappas was double-crossing him, and wanted to know who he was, and opened his coat, and saw the badge, and the officer said, "Is this yours?" and I said, "Yes," and explained why he was there, and the officer said, "You can explain that to Mr. Whitney."

On cross-examination, questioned by Mr. ALLEN, defendant Pappas, testified:

I told Mr. Whitney that I had talked to the sheriff about this transaction. I had talked with Matt Starwich many times before this about case. He told me the thing to do was to talk with Mr. Ramage and Mr. Hill.

Mr. Starwich knew all about the transaction, the first time I talked to him was two months before

(Testimony of Tom Pappas.)

the arrest. My brother and I own the City Taxicab and I own the Fry taxicabs.

I am not a deputy sheriff now.

I guess I will not know until after this trial whether [86] I am a deputy sheriff. I have never been notified that my commission had been revoked.

I did not tell Mr. Mooring that if he wanted any more of this stuff to telegraph me for lubricating oil. I did not tell the sheriff because I met those people and in an hour this transaction happened. I did not telephone to the sheriff's office when waiting at the Times Square, because I did not know whether they would deliver it or not. Ferguson and Thompson did not take me to the cache until after this transaction was completed, then I was supposed to get 25 cases for east of the mountains. I did not say anything to Mr. Mooring about where I was going to deliver it or that the liquor was in the back seat, or ask him what he was going to cover it up with, or that I told Mr. Mooring that the money was not enough. I did not take the rubber band off the money; I did not know how many cases were in the car and I did not count the money.

On redirect examination, questioned by Mr. BROWN, the defendant PAPPAS testified:

When I was at Mr. Mooring's house, I telephoned to Mr. Ferguson.

(Testimony of Tom Pappas.)

On direct examination, questioned by Mr. BROWN, defendant PAPPAS testified:

I have lived in Seattle for thirteen years, and have never been arrested for any offense.

The defendant Tom Pappas rests, and this is all the testimony and evidence offered on behalf of the defense of the defendant, Tom Pappas.
[87]

Testimony of Charles L. Ferguson, for Defendants.

CHARLES L. FERGUSON, one of the defendants, called as a witness in his own behalf, being first duly sworn, testified as follows:

(Questioned by Mr. CHAVELLE.)

That at the present time he is employed in fixing up camping grounds at Lake Sammamish for the purpose of renting boats, and auto camping; that he is married and has three children, and has lived in Seattle since 1906; that on the 29th day of June, 1922, he had taken his wife and oldest daughter downtown to the doctor in Ballard, and came on downtown to pay his water bill, and as he drove up the street across from the courthouse, Mr. Pappas was standing there, and he threw up his hand, and said, "Hello, Harry," and defendant Ferguson said, "Hello," and Pappas said, "Will you drive me up to see a party?" Ferguson was looking for a place to park his car, and Pappas asked him if he was in much of a hurry, and he told him that he was not, and then Pappas asked if he would drive him up to see a friend of

(Testimony of Charles L. Ferguson.)

his, and Ferguson said, "Yes." Pappas said his car was not in running order. He got in the car and we drove around and I saw his car, and it looked like it had just came out of a paint-shop, and he said, "How does it look to you?" and I said, "It looks pretty good," and the wheels were jacked up and a man with a can of paint was painting the tire just above the rim, and I told him to tell me where he wanted to go, and he directed me to go up on Broadway. I do not know what the street is. There was a fellow in the yard at a place he told me to stop, whom I had never seen before. It was the same man as Mr. Mooring, witness for the Government. He and Pappas had some words. I could not overhear the conversation, and after they got through there we came on down Broadway down to Pike Street. There was a party I sold a fishing boat to and I was to meet him at the Windsor Pool Room and he was to pay me. His name was Mr. Peterson. The boat had been sold to him on time. [88] He always makes his payments at that particular place. Mr. Thompson happened to be there, and I asked him if he had seen Mr. Peterson, and he said, "No," and I asked if he would like to take a ride and he said, "Where are you going?" and I said, "Out beyond Carlton Park." He said, "I do not care if I do," and he gets in and I was headed south, and I drove out. I had known Thompson before this time, and he had done some work on the boat that I sold to Mr. Peterson.

(Testimony of Charles L. Ferguson.)

When we came to Union Street we turned down to Fourth and when we got to Fourth and Pike Mr. Pappas said to me—before we were coming down he asked if I would go out and get a couple of packages for him. I figured he was going along at that time, and I said, “Yes, I will go out and get them,” and when we got to Fourth and Pike he said, “I will get out here. I want to see a party and I will wait here for you; there is no use of me going over there,” and I said, “Where am I going?” and he said he would direct me. He asked if I knew where Carlton Park was and I told him I did and he said when I got there to turn to the left and drive down a block or two and I would meet a party there at the first house and they would come out and would call me, and I said, “How will I know who they are?” and he said, “I will phone and tell him your name, and he will call you,” and Pappas said there was no use of his going out, and “You can pick me up when you come back,” and I said, “Where will you be?” and he said, “Out about the Times Square,” and I said, “All right,” and I go out and these parties are standing there, and as soon as I seen the parties I stopped and he said, “Are you Mr. Ferguson?” and I said, “Yes, sir,” and he said, “The fellow that Pappas sent out?” and I said, “Yes, sir,” and he said, “All right,” and he put the sacks in the car and I turned and came back and Pappas was standing there, and he gets in the car.

(Testimony of Chas. L. Ferguson.)

The witness testified that he was probably gone an hour and ten minutes. [89]

“When Pappas got in the car he directed me where to go, and when we got there instead of going to the side of the house— It was the same place I was before. When we got there he directed me to drive in the alley and when I got there he said “Turn here,” and I turned kind of catacornered from the garage and he got out and went to the side of the car. I did not leave the car, and the next thing a fellow came up and said he was a federal officer and that I was under arrest, and one of them said to kill the engine, and the other one said, “Never mind,” and he started to put me in the garage, and then he said, “No, we will take them to the house,” and they took us to the house. Mooring said to Pappas to wait a minute until he got the tent, and they pulled it over toward the garage, and I did not see whether Pappas done anything or not. I knew Pappas was a commissioned deputy sheriff. I have known Pappas two years. He never called me up the night before my arrest. If he did, the phone did not ring. I was not to receive any money or compensation at all from Mr. Pappas. It was just for accommodation. I did not know what the sacks had in them. They were never removed from the car while I was in the machine. The engine was left running, and I never saw the car any more. I never had any conversation with Mr. Pappas regarding the sale of intoxicating liquor. Mr. Pap-

(Testimony of Chas. L. Ferguson.)

pas never asked me to take him out to a cache, and I did not have any cache. Mr. Thompson had nothing whatsoever to do with the matter. I only asked him to go out for a ride. I was not to receive any part of the check made payable to Pappas, or any of the money.

Q. By the way, this car is your wife's car, is it not? A. Yes, sir; it is her car.

Q. And the car was bought from a man named Hayne in March, 1922. A. Yes, sir.

Q. And the bill of sale was made out to her? [90]

A. Yes, sir; she purchased the car herself with her own money.

Q. Is this the bill of sale you received for the car? (Indicating.) A. Yes, sir.

Mr. ALLEN.—I object to that, he was driving it.

Mr. CHAVELLE.—They have charged that the defendant owned his car, your Honor.

The COURT.—The objection is sustained.

Mr. CHAVELLE.—Note an exception.

The witness FERGUSON, continuing, testified that he never possessed the intoxicating liquor offered in evidence, or any part of it, did not transport the liquor, and did not sell the liquor.

On cross-examination, questioned by Mr. BROWN, the witness FERGUSON testified:

That he has never been convicted for violation of the law; did not know how many sacks there were; said he had gone out at the direction of Mr. Pap-

(Testimony of Chas. L. Ferguson.)

pas to a place in Carlton Park, and turned to the left and went a couple of blocks, where you could see a house, but he did not see a house, but saw a couple of men who were standing on the curb. They asked if he was Mr. Ferguson and he said he was, and they said, "Are you the man Mr. Pappas sent out?" and he said, "Yes." He did not get out of the car, and did not know what was in the sacks. He had known Mr. Pappas for two years previous to the arrest. He met Mr. Pappas in front of the County-City Building, and Pappas took him to Mr. Mooring's place. Witness went as an accommodation, and did not hear any transactions and knows nothing about any booze transaction. Did not know what was in the car.

[91]

On cross-examination, questioned by Mr. ALLEN, Defendant FERGUSON testified:

That Mr. Pappas did not call him up on the telephone the night previous to his arrest, and there was no liquor in the sacks so far as he knew. He did not examine them.

Q. Mr. Ferguson, did you not have a policeman arrested a short time before this for knocking you over with some liquor?

Mr. CHAVELLE.—I object to that.

Mr. ALLEN.—It is testing his credibility.

The COURT.—He may answer in view of his testimony on direct examination.

Q. You had that officer dismissed for knocking you over with sacks of liquor similar to that?

(Testimony of Chas. L. Ferguson.)

A. That has been quite a while ago.

Q. And you said a moment ago you never were arrested for a liquor violation?

A. I never have been arrested.

Mr. CHAVELLE.—He had another man arrested.

Q. Right now you are under charge in this court for other cases?

A. This is the only time I have been arrested for this.

Q. For this case? A. Yes, sir.

Q. But not for liquor?

A. I have been arrested, but never convicted.

Q. In fact, there are two other cases pending right now in which you were arrested for liquor violation? A. No, sir.

Q. In this court? A. No, sir. [92]

Mr. CHAVELLE.—I want an exception to these questions.

The COURT.—You asked if he had been arrested?

Mr. CHAVELLE.—I did not ask him if he had been arrested. I asked him if he did transport liquor.

The COURT.—You said he had never been arrested.

Mr. CHAVELLE.—Mr. Brown asked that.

The COURT.—Then the jury will disregard the last answer if I misunderstood the examination. You will disregard that answer, whether he was arrested or not, and dismiss it from your minds.

The witness, continued, further questioned by Mr. ALLEN:

(Testimony of Chas. L. Ferguson.)

That he did not know how many sacks of liquor were put in the car; did not know there were five sacks of beer and four sacks of whiskey; that he was not to get ten dollars a case for delivering them; that Pappas had asked him to go out, and Pappas himself could have gone if he wanted to; that he did not refuse Pappas permission to go along; he did not hear any conversation between Mr. Pappas and Mr. Mooring, and did not see the money pass. Did not know anything about the matter until they arrested him. He saw Mr. Mooring go and get the tent; that he had driven Mr. Pappas out to Mr. Mooring's house; Mr. Pappas said he wanted to go out and see a friend; he did not hear Mr. Pappas tell Mr. Mooring he would be back a little later with the stuff; he had known Pappas about two years.

On redirect examination, questioned by Mr. CHAVELLE, defendant FERGUSON testified:

Pappas had told witness Ferguson that he had a chance of getting out of it, and he said, "How is that, out of what?" and he said, "This trouble," and he went on telling that he could [93] pass off as a sheriff, and Ferguson said, "That has nothing to do with it; the only thing to do is to get up and tell the straight truth," and he said, "I guess that is the best thing." Pappas said he would do the right thing and go up and tell the truth.

Testimony of Oliver Thompson, for Defendants.

OLIVER THOMPSON, one of the defendants, called as a witness in his own behalf, being first duly sworn, testified as follows, on direct examination, questioned by Mr. CHAVELLE:

That he is a fisherman and has been for seven years; that he owns a fishing boat of the capacity of eight tons; that he had known Mr. Ferguson by reason of the fact that he had worked on Mr. Ferguson's boat repairing the engine. The boat was subsequently sold by Ferguson to Pete Peterson; that on the 30th day of June, 1922, he was standing in front of the barber shop by the Windsor Pool Hall, and Ferguson drove up with a car, and got out. Thompson did not know where he went to but when he came back he said, "Hello," and Thompson answered him, and he asked Thompson if he wanted to take a little ride, and Thompson said he did not mind. There was some one else in the car at the time with Mr. Ferguson, who was introduced to Mr. Thompson as a fellow named Pappas. They rode out to Carlton Park and then returned down town. The defendant Thompson did not operate the car at any time, and had nothing to do with the operation of the car, but was just a passenger or guest in the car. He did not have any interest in the transportation of the liquor in evidence, and did not know that it was being transported. He had no pecuniary interest in the transaction or in the check or money which have been offered as exhibits in this case. [94]

(Testimony of Oliver Thompson.)

On cross-examination, witness THOMPSON, questioned by Mr. ALLEN, testified:

Q. Do you remember of being in the presence of Mr. Whitney and Mr. Reagan and Mr. Mooring on June 30th, at the prohibition director's office?

A. Yes, sir.

Witness further testified that he had known Mr. Ferguson for some time, and had worked for him off and on; that he had never been convicted; that the name of his boat is the "Martha T." The boat he worked on for Mr. Ferguson was called the "Raider" and he, Ferguson, sold it to Mr. Peterson. That he had worked on another boat for Mr. Ferguson; engaged as a fisherman for seven years; he did not see any money pass to Mr. Pappas; that his hearing is *defection*; he did not know anything about the number of sacks of liquor; that he did not help unload any liquor; that he had not heard any conversation about the money not being sufficient to pay for the same.

On redirect examination, questioned by Mr. CHAVELLE, defendant THOMPSON stated:

That he was in the front seat of the car, and that he got out of the car when told to by one of the federal officers.

On recross-examination, defendant THOMPSON, questioned by Mr. ALLEN, stated:

That he did not know whether Mr. Pappas claimed he was a deputy sheriff. Heard no conversation about, "I did not think you would play a trick like that on me, Harry."

The defendants Charles L. Ferguson and Oliver Thompson rest. [95]

This was all the testimony and evidence offered on behalf of the defense of the defendants Thompson and Ferguson.

Thereupon the defense rested.

Thereupon the Government rested.

Motion for a directed verdict as to the defendants was made, and denied as to each of the defendants, and exception allowed.

Argument was made on behalf of the Government and on behalf of the defense, and the Court gave its instructions to the jury as follows:

Court's Instructions to Jury.

The COURT.—Gentlemen of the jury, by the indictment on file, the defendants are charged in three counts. Count 1 charges them with the possession of 46 bottles of whiskey, and 120 pints of beer; Count 2 charges them with transporting this beer and this whiskey, and Count 3 charges them with the sale of 24 bottles of whiskey, and charges that this is contrary to the National Prohibition Act.

The defendants have each pleaded not guilty; that means they deny each count. The burden is upon the Government to prove that they are guilty as charged in this indictment. They are presumed innocent until they are proven guilty beyond every reasonable doubt, and this presumption continues with them throughout the trial, and until you are convinced by the evidence that they are guilty, by the degree of proof which I have indicated.

In this case, you are instructed that it is against the National Prohibition Act for a person to possess or transport or to sell any liquid that contains an alcoholic content above one-half of one per cent of alcohol in volume, and that is fit for beverage purposes. [96]

The issues are somewhat complicated in this, that the defendants do not among themselves bear the same relations to the Government. The Government contends the defendants are all on the same basis, and that they are all responsible for the acts which are charged in the indictment, and the Government contends the proof sustains the charges.

You are instructed that from the defendants' viewpoint they are different, in this: the defendant Pappas contends he was an officer of the State, a Deputy Sheriff, appointed by the Sheriff of King County, and that he was in the discharge of his official duties in the enforcement of the laws of the State of Washington, and of the United States.

You are instructed that so far as the violation of the law here charged is concerned, or the possession of the liquids charted, the Washington law and the United States law are in harmony.

The defendant Ferguson contends that he had nothing to do with the matter, and the defendant Pappas said he did arrange with the witness Mooring to sell the whiskey and to do this from a supply which Ferguson had, and you heard the testimony with relation to the transaction between the parties; and he said he arranged for the transportation of this whiskey with Ferguson, to be

delivered over to Mooring, and agrees with the witnesses on the part of the Government with relation to the transportation, excepting that he had nothing to do himself with the transportation, other than as acting as an intermediary between Mooring and Ferguson. He denies that the money and the check which the Government's witnesses have sworn they paid to him, and which has been admitted in evidence in this case, was delivered to him, other than as you heard in his testimony, that it was handed to him when they said, "This is yours," and he said, "It does not belong to me," and that he did not have it voluntarily. [97]

And the defendant Ferguson contends, briefly, that he was engaged by the defendant Pappas to transport some packages from this place on Magnolia Bluff to the place where it was finally found and where the parties were arrested, and that he did not know what they were.

And the defendant Thompson contends he was merely a spectator, who accompanied the defendant Ferguson upon the trip; so from these different viewpoints, the defendants occupy different relations.

You are instructed that, as a matter of law, if the defendant Thompson was an innocent spectator on this trip, and merely a passenger, or guest—passenger upon Ferguson's car, or a guest of Ferguson, accompanying him upon this trip, innocent of the purpose or the motives of the trip, and had nothing to do with it whatever, then the defendant Thompson would not be guilty, because he did not have guilty knowledge of anything that transpired.

You are instructed that if the defendant Ferguson went out there to get some packages, he not knowing what the packages were, and not knowing what the packages were placed into the car for, and hauled this whiskey from the place where it was loaded into the car to the place where it was found, he not then knowing what it was, then the defendant Ferguson would not be guilty.

And you are instructed that if the defendant Pappas was acting in his official relation, and had nothing to do with this transaction, other than to bring Mooring and Ferguson together so they could conclude the relation of purchaser and seller, and had nothing further to do with that, then the defendant Pappas, if he were acting in good faith, would not be guilty of the violation of the law.

You are instructed, however, gentlemen of the jury, that the fact that the defendant Pappas was a Deputy Sheriff would not [98] excuse him from violating this law; would not excuse him from arranging with any person for the purchase and sale of this whiskey and this commodity, if he was acting independently of his official relation, and did not do that in his official capacity, and it would not excuse him from perfecting a sale of the whiskey charged in this indictment, if he did effect a sale. It would not excuse anybody, no official relation, I do not care what it is. The Governor of the State could not go out and arrange with another person to sell some whiskey and sell the whiskey to him in violation of this act, nor could the sheriff of this county do it. No person could do that.

So, in this case, it is for you to determine what relation these defendants had to this transaction, and what the facts were.

If the defendant Pappas, as testified to by the witnesses on the part of the Government, arranged with the witness Mooring to sell him some whiskey, and he arranged with Mr. Ferguson to bring the whiskey to the place where it was to be delivered to Mr. Mooring, and at the place where it was to be delivered, and Mr. Mooring paid to him the money and the check, as testified to in this case, then the defendant Pappas would be guilty of the sale of this whiskey, and if he arranged with Ferguson to haul this whiskey, to transport it, from the place where it was to the place where the relations were consummated, whatever they were, then he would be guilty of transporting, as well as of sale, and if he had this whiskey in his possession at the place where the negotiations were consummated, whatever the negotiations were, you may find were had, then he would be guilty of possession of whiskey likewise.

And you are instructed that you are the sole judges of the facts in the case, and you must determine what the facts are. You are likewise the sole judges of the credibility of the witnesses [99] who have testified before you in this case, and in determining the weight or the credit you will attach to the testimony of any witness, you will take into consideration his demeanor on the stand, the reasonableness of the story, the interest or the lack of interest in the result of this controversy, the opportunity of the witness for knowing the things about

which he has testified. Take into consideration every element which you feel bears on the credibility of the witnesses, and apply to each witness the same test you would apply to him in the ordinary affairs of life, when his truthfulness or falsity might be under consideration by you.

The defendants in this case are each interested, because if they are convicted they must be punished. Did they, therefore, because of this interest, so relate their statements before you as to the facts as they concede them to be, so as to exonerate themselves from any liability with relation to the charges involved here? Did their story impress you as true? Did the relations, as testified to by the defendant Pappas, and by the witnesses Hill and Ramage, impress you as reasonable, in view of the arrangements covered by the testimony and what was done and what transpired? If the defendant Pappas was innocent in locating a cache of—a quantity of whiskey, and believed, as he testified, that the defendant Ferguson had such a cache, then would he have taken some steps, when he had arranged with the defendant Ferguson to get some whiskey or some of the cache, to place the entire trip under surveillance and arrange with Hill and Ramage that some person should be—should trail him, if he did not himself want to make such an arrangement, as would bring about some consummation of that purpose, instead of waiting, as he said, for such a length of time as he was afraid he would not come back? Was that reasonable for a public official to do such a thing? [100]

These are all elements to be taken into consideration by you. And again, when the individual knew the transaction was being carried forward to consummation, is it reasonable to assume he would have carried it forward himself without getting in touch with others, as disclosed in this case, without getting in touch with the officials with whom he was co-operating, for the purpose of having the cache found and discovered, when the parties went to it, as he had arranged should be done.

Bring to bear upon every phase of the testimony in this case the circumstances which the testimony has disclosed, and every fact which is either conceded or which the circumstances will warrant in your judgment.

With relation to the defendant Ferguson, he has testified before you—well, you will remember his testimony—with relation to the transactions, in response to questions propounded by his counsel and by Government counsel and on the part of counsel for defendant Pappas, and you will determine whether a man of his experience, and one engaged in the business in which he is, whether it would be possible for the number of sacks of bottles to be placed into an automobile in which he was sitting, in the front seat, and he haul that from the place where it had been taken from, to the place where it was finally apprehended, and not know what it was. He said he did not know what it was. Does that impress you as being a truthful statement? Taking into consideration all the circumstances which have been disclosed here, it is for you

to determine what weight should be given to that statement, and to his entire testimony in the case.

Then take the witness Thompson. Does his testimony ring true? Is there anything in his testimony which would place after his statement an interrogation point, or make you feel no credence [101] could be placed upon it? or which makes you feel there are no facts upon which to predicate the statement he made?

On the other hand, take the witnesses for the Government. They are sworn officers of the Government. Is there anything that would show prejudice or bias on their part against the defendants? That they would go upon the stand and testify to anything that is not true?

As a matter of fact, there is not much dispute between the witnesses on the part of the Government, and upon the part of the defendants. The dispute is among themselves, and you will, therefore, gentlemen of the jury, weigh this testimony fairly, and consider where the truth in this case lies.

Another element in this case: In the examination of the witnesses, the witnesses were permitted to make statements with relation to conduct of a defendant in the absence of the defendant.

You are instructed, as a matter of law, any statement made by a defendant himself is always admitted, but a statement made in the absence of a person, so that he did not have an opportunity to contradict or to deny it, is not, as a general rule of law, admitted; and at the inception of the trial, when the first objection was made, I limited the answer to the defendant who had made the state-

ment. As the trial developed, I observed to counsel, so they would be advised, that possibly a statement under the circumstances, might be taken here in this sort of a case, against a party, when made in his absence, and you are instructed, gentlemen of the jury, that if you believe in this case that the defendant Pappas and the defendant Ferguson, entered into a conspiracy or confederation, and including the defendant Thompson, if the testimony warrants it, but if they entered into a conspiracy or confederation for the purpose of having transported and sold this whiskey charged in [102] this indictment, then you are instructed that a statement made by either of the parties in the absence of the other party would be admissible in evidence in this trial against such other party, the theory being that if the parties entered into a conspiracy or confederation, then each party entering into that conspiracy or confederation, constituted the other party his agent for the purpose of carrying forward the particular thing that they had conspired to do, and when a person constitutes another his agent to do a particular thing, then he is bound by what the person does or says, in carrying out that particular thing.

So, in this case if you believe that the defendant Pappas, and the defendant Ferguson entered into a conspiracy, whether the defendant Thompson was a part of that conspiracy or not, then believing that to be established in your mind, you would have a right to consider a statement made by

either of the defendants in the absence of the other, testified to in this case.

But, if such conspiracy or confederation has not been established, then you may not consider a statement testified to as made here in the absence of such defendant, against that defendant, but it can only be considered against the person who made it.

In this case, gentlemen of the jury, I have referred to the matter of reasonable doubt. You are instructed that a reasonable doubt is just such a doubt as the term implies. It is a doubt for which you can give a reason. A juror is satisfied beyond a reasonable doubt when he is convinced to a moral certainty of the guilt of the party charged. It is not a speculative, imaginary or conjectural doubt. It is a doubt which is created by the want of evidence or it may be created by the evidence itself. It is such a doubt as a man of ordinary prudence, sensibility and decision, in the determination of an issue of like concern to himself as that [103] before the jury is to the defendant, as would make him pause or hesitate in arriving at a conclusion.

In this case, you will consider this case fairly and conclude it from the evidence as you have heard it, and as it has been developed and disclosed by the witnesses upon the stand.

If you believe in this case any witness has wilfully testified falsely concerning any material fact in this case, you have the right to disregard the testimony of such witness entirely, except in so

far as it may be corroborated by other credible evidence or circumstances detailed or developed upon the trial of this cause.

You will give the defendants a square deal, and you will give the Government a square deal, bearing in mind that we cannot have government unless we have law enforcement, and Courts are the tribunals in which such issues are determined.

Judge and juries and lawyers perform different functions in the trial of a case. The lawyers are to place before you the facts so far as they know them from their viewpoint; the judge to see that the trial is orderly conducted and immaterial matter excluded, and to advise the jury on the law, what the law is with relation to the issues. The jury are the sole judges of the facts and of the credibility of the witnesses.

If I have referred to any fact in this case, I want you to disregard it, as I do not care to invade the province of the jury, and it has been done simply to illustrate some proposition of law involved with the facts, and you will decide this case from the facts and the evidence and circumstances developed and detailed upon the trial of the case.

You have a right to consider any circumstance that has been disclosed, bearing upon this issue. Circumstantial evidence [104] is legal and competent and proper for your consideration, and when it is of such a character as to exclude every reasonable hypothesis except that of the guilt of the defendant, and inconsistent with every other hypothesis except that of the innocence of the

defendant, then the circumstance will be sufficient for conviction.

It will require your entire number to agree upon a verdict. You can find either of the defendants guilty upon all three counts, or you can find either of the defendants guilty of one count, and not guilty of the other two counts, or you can find either of the defendants guilty on two of the counts and not guilty on the other count, or you can find either of the defendants not guilty on all three counts. You will fill in the verdicts which will be furnished you in your jury-room, filling in the blank form "is" or "is not" guilty, as you may find as to each of the defendants, on the several counts.

The information is not evidence, but is sent to the jury-room for your use to determine what the charge is. Have I covered the case, and are there any exceptions?

Mr. BROWN.—You said there was no dispute between the Government and the defendant Pappas as to the money transaction.

The COURT.—I did not say that. I said upon the money transaction the defendant denies that.

Mr. BROWN.—There is a dispute between the Government witnesses and the defendant Pappas as to just how that money was paid.

The COURT.—Let me cover that. The undisputed fact is with relation to the transportation of the whiskey, and you are instructed that it is an undisputed fact that the whiskey contains above the amount of alcoholic content allowed by law,

and that it is fit for beverage purposes. Every other fact is in dispute, and [105] you will have to determine from the evidence what the facts are. There is no dispute about the transportation, of course, but there is a dispute as to the knowledge of the defendant Ferguson, he denies that he knew what it was, but all the other elements are in dispute, and you will determine this all from the evidence that has been presented.

Mr. ALLEN.—Do you think it is proper to instruct upon the law of aiding and abetting.

The COURT.—No, that is not in the case.

Mr. ALLEN.—There might be some confusion about the purchase and sale.

The COURT.—No, no. If there is nothing else you may retire to the jury-room and consider your verdict. It will require your entire number to agree upon a verdict, and when you have agreed you will cause to be returned into court your verdicts, which must be signed by your foreman whom you will select when you have retired.

Mr. CHAVELLE.—Will your Honor let the record show our exception to this charge.

The COURT.—No, I cannot. I asked if there were any exceptions. Wait, gentlemen of the jury. Exceptions have to be taken before the jury retire.

Mr. BROWN.—The only exception I suggested has been covered.

The COURT.—Yes.

Mr. CHAVELLE.—I take exception to the instructions of the Court relating to conspiracy. I

contend there is no evidence of any such an agreement.

The COURT.—Very well. You may retire, gentlemen of the jury. [106]

The jury then retired, and after deliberation returned a verdict of guilty as charged, under all three counts.

Thereafter, the defendants Pappas, Charles L. Ferguson and Oliver Thompson, gave notice of intention to ask for a new trial and for arrest of judgment.

Thereupon, within the time allowed, before sentence was imposed, the defendants moved for a new trial upon the following grounds:

1. Insufficiency of the evidence to justify the verdict.

2. Said verdict was against, and contrary to the evidence.

3. Said verdict was against, and contrary to law.

4. Errors of law occurring during the trial, and excepted to at the time by the attorney for the defendants.

Defendants Pappas, Ferguson and Thompson at the same time moved for arrest of judgment, upon the following ground:

That Counts I, II, and III of the indictment herein had no force or effect, in the above-entitled cause, and are contrary to the law.

Thereupon, the Court denied each of said motions. The Government moved for judgment and sentence and the Court then entered judgment and sentence as follows:

That the defendant Tom Pappas be confined in the King County Jail for six months, and pay a fine of Five Hundred Dollars;

That the defendant, Charles L. Ferguson, be confined in the King County Jail for six months, and pay a fine of five hundred dollars;

That the defendant, Oliver Thompson, be confined in the King County Jail for a period of ninety days.

And now, in furtherance of justice, and that right may be done the defendants, Pappas, Ferguson and Thompson, said defendants pray that this, their bill of exceptions, may be settled, allowed, [107] signed and sealed by the Court, and made a part of the record.

EDWARD H. CHAVELLE,
Attorney for Defendants, Ferguson and Thompson.
FRED C. BROWN,
Atty. for Tom Pappas.

Order Settling Bill of Exceptions.

Now, on this 23d day of February, 1923, the above cause came on for hearing on the application of the defendants Charles L. Ferguson and Oliver Thompson and Tom Pappas to settle the bill of exceptions in this cause. Counsel for both parties appeared, and it further appearing to the Court that the time within which to settle and file the bill of exception in the foregoing cause has been duly extended, and that said bill as heretofore lodged with the clerk is duly and seasonably presented for settlement and allowance, and it

further appearing that said bill of exception contains all of the material facts occurring upon the trial of the cause, together with the exceptions thereto, and all of the material matters and things occurring upon the trial, except the exhibits introduced in evidence which are hereby made part of said bill of exceptions by reference and incorporation; and the Court being duly advised, it is by the Court

ORDERED, that said bill of exceptions be and it hereby is settled as a true bill of exceptions in said cause, which contains all of the material facts, matters, things, and exceptions thereto occurring upon the trial of said cause and not of record heretofore, and the same is hereby certified accordingly by the undersigned Judge of this Court, who presided at the trial of said cause, as a true, full and correct bill of exceptions, and the Clerk of the court is hereby ordered to file the same as a record in [108] said cause and transmit the same to the Honorable Circuit Court of Appeals for the Ninth Circuit.

JEREMIAH NETERER,
United States District Judge.

Received bill of exceptions this 15th day of Feb.
1923.

THOS. P. REVELLE,
BK.
U. S. Atty.

[Indorsed]: Lodged in the United States District Court, Western District of Washington, Northern Division. Feb. 15, 1923, and Filed Feb.

23, 1923, as Settled. F. H. Harshberger, Clerk.
By S. E. Leitch, Deputy. [109]

In the District Court of the United States for
the Western District of Washington, North-
ern Division.

No. 7069.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TOM PAPPAS, CHARLES FERGUSON and
OLIVER THOMPSON,

Defendants.

**Order Extending Time to and Including April 16,
1923, to File Record and Docket Cause.**

For good cause now shown, it is ORDERED,
that the time for filing the record in the above-
entitled cause in the office of the Clerk of the
above-entitled court, be and the same is hereby ex-
tended to the 16th day of April, 1923.

Done in open court this 27th day of March, 1923.

EDWARD E. CUSHMAN,

Judge.

O. K.—DeWOLFE EMORY,

Asst. U. S. Atty.

[Endorsed]: Filed in the United States Dis-
trict Court, Western District of Washington,
Northern Division. March 27, 1923. F. M.

Harshberger, Clerk. By S. E. Leitch, Deputy.
[110]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 7069.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TOM PAPPAS, CHARLES L. FERGUSON and
OLIVER THOMPSON,

Defendants.

Praecipe for Transcript of Record.

To the Clerk of the Above-entitled Court:

You will please prepare copies of the following documents and papers in the above cause, and forward them under your certificate and seal to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, as a transcript of record in said cause, viz.:

1. Indictment.
2. Arraignment.
3. Plead of not guilty.
4. Record of days trial and journal entry of order empaneling jury.
5. Verdict of guilty.
6. Motion in arrest of judgment.
7. Motion for new trial.
8. Order denying motion for new trial, and in arrest of judgment (journal entry).

9. Sentence and judgment of Court.
10. Petition for writ of error.
11. Assignment of errors.
12. Order allowing writ of error.
13. Writ of error with order attached. [111]
14. Citation in error.
15. Bond on writ of error.
16. Order extending time and return day for appellate record, to February 15, 1923.
17. Order extending time for filing record until March 15, 1923.
18. Bill of exceptions with allowance and endorsements thereon.
19. Order settling and allowing bill of exceptions.
20. Praecipe for appellate record.
21. Clerk's certificate.

EDWARD H. CHAVELLE,

Attorney for Defendants Charles L. Ferguson and
Oliver Thompson.

FRED C. BROWN,

Atty. for Tom Pappas.

I waive the provisions of the act approved February 13, 1911, and direct that you forward typewritten transcript to the Circuit Court of Appeals for printing as provided under rule 105 of this Court.

EDWARD H. CHAVELLE,

Attorney for Defendants Charles L. Ferguson and
Oliver Thompson.

FRED C. BROWN,

Atty. for Tom Pappas.

[Indorsed]: Filed in the United States District Court, Western District of Washington, Northern Division. Feb. 27, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [112]

In the United States District Court for the Western District of Washington, Northern Division.

No. 7069.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TOM PAPPAS, CHARLES L. FERGUSON, and
OLIVER THOMPSON,

Defendants.

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America,
Western District of Washington,—ss.

I, F. M. Harshberger, Clerk of the United States District Court for the Western District of Washington, do hereby certify this typewritten transcript of record, consisting of pages numbered from 1 to 112, inclusive, to be a full, true, correct and complete copy of so much of the record, papers, and other proceedings in the above and foregoing entitled cause, as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the

Clerk of said District Court, and that the same constitute the record on return to writ of error herein, from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the plaintiffs in error for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit:

Clerk's fees (Sec. 828, R. S. U. S.)	
for making record, certificate or	
return—287 folios at 15¢	\$43.05
[113]	

Clerk's certificate to transcript of	
record, 4 folios at 15¢60
Seal to said certificate20

I hereby certify that the above cost for preparing and certifying record, amounting to \$43.85, has been paid to me by attorneys for plaintiffs in error.

I further certify that I hereto attach and herewith transmit the original writs of error and the original citations issued in this cause.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court,

at Seattle, in said District, this 12th day of April, 1923.

[Seal] F. M. HARSHBERGER,
Clerk United States District Court, Western Dis-
trict of Washington. [114]

In the United States Circuit Court of Appeals,
Ninth Circuit.

No. 7069.

TOM PAPPAS et al.,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Writ of Error.

United States of America,
Ninth Judicial Circuit,—ss.

The President of the United States of America:

To the Honorable Judge of the District Court
of the United States for the Western District
of Washington, Northern Division:

Because in the record and proceedings, as also in
the rendition of judgment, of a plea which is in the
said District Court before you, between the United
States of America, as plaintiff, and Tom Pappas as
defendant, a manifest error hath happened, to the
great damage of the said defendant, Tom Pappas, as
by his complaint appears, and we being willing that
error, if any hath been, should be corrected, and
full and speedy justice done to the parties aforesaid

in this behalf, do command you, if judgment be therein given, that under your seal, you send the record and proceedings aforesaid, with all things concerning the same to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the state of California, where said Court is sitting, within thirty days from the date hereof in the said Circuit Court of Appeals to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done. [115]

WITNESS, the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States of America, this 2d day of January, 1923.

[Seal] F. M. HARSHBERGER,
Clerk of the United States District Court for the
Western District of Washington, Northern
Division.

Copy rec'd Jan. 4, 1923.

THOS. P. REVELLE,
Atty. Deft. in Error.

Filed in the United States District Court, Western District of Washington, Northern Division. Jan. 2, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [116]

United States Circuit Court of Appeals for the
Ninth Circuit.

No. 7069.

O. THOMPSON and C. FERGUSON,
Plaintiffs in Error,
vs.

UNITED STATES OF AMERICA,
Defendant in Error,

Writ of Error.

To the Honorable Judges of the District Court for
the Western District of Washington, Northern
Division, GREETING:

Because, in the record and proceedings, as also in
the rendition of the judgment in the District Court
before the Honorable Jeremiah Neterer, between
O. Thompson and C. Ferguson, plaintiffs in error,
and United States of America, defendant in error,
a manifest error hath happened, to the great damage
of the said O. Thompson and C. Ferguson, plaintiffs
in error, as by their complaint appears.

We, being willing that error, if any hath been,
should be duly corrected, and full and speedy justice
done to the party aforesaid in this behalf, DO COM-
MAND YOU, if judgment be therein given, that
then under your seal, distinctly and openly, you
send the record and proceedings aforesaid, with all
things concerning the same, to the United States
Circuit Court of Appeals for the Ninth Circuit,
together with this writ, within thirty days from the
date hereof, to be then and there held, that the

record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done. [117]

WITNESS, the Honorable WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States, the 28th day of December, 1922.

[Seal] F. M. HARSHBERGER,
Clerk of the United States District Court for the
Western District of Washington, Northern
Division.

Service of within writ of error and receipt of a copy thereof, is hereby admitted, this 28th day of December, 1922.

THOS. P. REVELLE,
Attorney for Defendant in Error.

Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 28, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [118]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

IN ADMIRALTY—No. 7069.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TOM PAPPAS et al.,

Defendants.

Citation on Writ of Error.

United States of America,—ss.

The President of the United States of America, to
the United States of America, and to THOMAS
P. REVELLE, United States Attorney for the
Western District of Washington, Northern
Division, GREETING:

You are hereby cited and admonished to be and
appear before the United States Circuit Court of
Appeals for the Ninth Circuit, at San Francisco, in
the State of California, within thirty days from date
hereof, pursuant to a writ of error filed in the
Clerk's office of the District Court of the United
States, for the Western District of Washington,
Northern Division, wherein said Tom Pappas is
plaintiff in error, and the United States of America
is defendant in error, to show cause, if any there be,
why judgment in the said writ of error mentioned
should not be corrected and speedy justice should
not be done to the party in that behalf.

WITNESS, the Honorable EDWARD E. CUSH-
MAN, Judge of the District Court of the United
States for the Western District of Washington,
Northern Division, this 2d day of January, 1923.

EDWARD E. CUSHMAN,
United States District Judge.

[Seal] Attest: F. M. HARSHBERGER,
Clerk, United States District Court.

Received copy, Jan. 2, 1923.

THOS. P. REVELLE,
Atty. for Pltff.

Filed in the United States District Court, Western District of Washington, Northern Division. Jan. 2, 1923. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [119]

In the District Court of the United States for the Western District of Washington, Northern Division.

IN ADMIRALTY—No. 7069.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TOM PAPPAS, OLIVER THOMPSON, and
CHARLES H. FERGUSON,

Defendants.

Citation on Writ of Error.

United States of America,—ss.

The President of the United States of America, to the United States of America, and to THOMAS P. REVELLE, United States Attorney for the Western District of Washington, Northern Division, GREETING:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, in the State of California, within thirty days from date hereof, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States, for the Western District of Washington, Northern Division, wherein said Charles H. Fergu-

son is plaintiff in error, and the United States of America is defendant in error, to show cause, if any there be, why judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the party in that behalf.

WITNESS, the Honorable JEREMIAH NETERER, Judge of the District Court of the United States for the Western District of Washington, Northern Division, this 28th day of December, 1922.

JEREMIAH NETERER,

United States District Judge.

[Seal] Attest: F. M. HARSHBERGER,
Clerk, United States District Court.

Received a copy of the within citation this 28 day of Dec., 1922.

THOS. P. REVELLE,

Attorney for Plff.

Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 28, 1922. F. M. Harshberger, Clerk. By S. E. Leitch, Deputy. [120]

In the District Court of the United States for the Western District of Washington, Northern Division.

IN ADMIRALTY—No. 7069.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TOM PAPPAS, OLIVER THOMPSON, and
CHARLES H. FERGUSON,

Defendants.

Citation on Writ of Error.

United States of America,—ss.

The President of the United States of America,
to the United States of America, and to
THOMAS P. REVELLE, United States At-
torney for the Western District of Washington,
Northern Division, GREETING:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, in the State of California, within thirty days from date hereof, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the Western District of Washington, Northern Division, wherein said Oliver Thompson is plaintiff in error, and the United States of America is defendant in error, to show cause, if any there be, why judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the party in that behalf.

WITNESS the Honorable JEREMIAH NETERER, Judge of the District Court of the United States for the Western District of Washington, Northern Division, this 28th day of December, 1922.

JEREMIAH NETERER,

United States District Judge.

[Seal] Attest: F. M. HARSHBERGER,

Clerk, U. S. Court.

Received a copy of the within citation this 28 day of Dec., 1922.

THOMAS P. REVELLE,

Attorney for Plaintiff.

Filed in the United States District Court, Western District of Washington, Northern Division. Dec. 28, 1922. F. M. Harshberger, Clerk. By _____, Deputy. [121]

[Endorsed]: No. 4037. United States Circuit Court of Appeals for the Ninth Circuit. Tom Pappas, Charles H. Ferguson and Oliver Thompson, Plaintiffs in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court for the Western District of Washington, Northern Division.

Received April 16, 1923.

F. D. MONCKTON,
Clerk.

Filed May 21, 1923.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.